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WASHINGTON, DC

WHEN: January 24, 2001, from 9:00 a.m. to Noon (E.S.T.)

WHERE: Office of the Federal Register
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800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

Contents

Federal Register

Vol. 65, No. 249

Wednesday, December 27, 2000

Separate Parts In This Issue

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

CFR PARTS AFFECTED IN THIS ISSUE

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

9 CFR
93.....81727

12 CFR
Proposed Rules:
1701.....81768
1770.....81771
1780.....81775

14 CFR
23.....81727
33.....81729
39.....81731
71 (2 documents).....81732
121.....81733
125.....81733
Proposed Rules:
39 (2 documents).....81780, 81782

17 CFR
275.....81737
279.....81737

21 CFR
50.....81739
310.....81739
312.....81739
314.....81739

22 CFR
126.....81739

29 CFR
2590.....82128

32 CFR
818.....81740

38 CFR
21.....81740

39 CFR
Proposed Rules:
266 (2 documents).....81784, 81785

40 CFR
52.....81743
Proposed Rules:
52 (2 documents).....81786, 81799
420.....81964
1602.....81810

42 CFR
Proposed Rules:
412.....81813
413.....81813
422.....81813

45 CFR
302.....82176
303.....82154
304.....82176
305.....82176

46 CFR
501.....81748
502.....81748

47 CFR
36.....81759
54.....81759
Proposed Rules:
0.....81816
1.....81816
61.....81816
69.....81816
73.....81816

50 CFR
648.....81761
660.....81766
Proposed Rules:
17.....82086

Rules and Regulations

Federal Register
Vol. 65, No. 249
Wednesday, December 27, 2000

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 95–054–4]

Importation of Horses From CEM-Affected Regions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Technical amendment.

SUMMARY: We are making a technical amendment to the regulations regarding the importation of horses to restore the State of Florida to the list of States approved to receive mares over 731 days of age from regions affected with contagious equine metritis. The entry for the State of Florida was inadvertently removed from that list in an earlier final rule.

EFFECTIVE DATE: December 27, 2000.

FOR FURTHER INFORMATION CONTACT: Susan Gallagher, Regulatory Coordination Specialist, Regulatory Analysis and Development, Policy and Program Development, APHIS, USDA, 4700 River Road Unit 118, Riverdale, MD 20737–1238; (301) 734–8682.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 (referred to below as the regulations) prohibit or restrict the importation of certain animals into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subpart C—Horses, §§ 93.300 through 93.326 of the regulations, pertains to the importation of horses into the United States.

Note: At the time the final rule referred to in this document was published, the regulations described in the previous paragraph were located in 9 CFR part 92. However, on October 28, 1997, we published in the **Federal Register** (62 FR 56000–56026, Docket No. 94–106–9) a final rule that redesignated part 92 as part 93. In describing the actions taken in that final rule, we will cross-reference the former part 92 citations with their current locations in part 93.

In a final rule published in the **Federal Register** on October 7, 1996 (61 FR 52236–52246, Docket No. 95–054–2), and effective November 6, 1996, we amended the regulations regarding the importation of horses from regions affected with contagious equine metritis (CEM) by incorporating new testing and treatment protocols, providing for the use of accredited veterinarians to monitor horses temporarily imported into the United States for competition purposes, and removing the requirements for endometrial cultures and clitoral sinusectomies in mares. As part of that final rule, we moved the lists of States that have been approved to receive mares and stallions over 731 days of age from CEM-affected regions from § 92.304 to § 93.301 (current § 93.301). When we moved those lists, we inadvertently removed the State of Florida from the list in § 92.301(h)(7) (current § 93.301(h)(7)) of States approved to receive mares over 731 days of age from CEM-affected regions.

It was never our intention to remove Florida from that list, and no such change to the list was discussed in the final rule or in the proposed rule that preceded it (61 FR 28073–28085, Docket No. 95–054–1, published June 4, 1996). We are, therefore, amending § 93.301(h)(7) to restore the State of Florida to the list of States approved to receive mares over 731 days of age from CEM-affected regions.

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 93 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 93.301 [Amended]

2. In § 93.301, paragraph (h)(7), the list of States is amended by adding, in alphabetical order, the words "The State of Florida".

Done in Washington, DC, this 19th day of December 2000.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–32895 Filed 12–26–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE163; Special Conditions No. 23–105–SC]

Special Conditions: Sino Swearingen, Model SJ30–2; Side-Facing Seat.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Sino Swearingen, Model SJ30–2 airplane. This airplance will have a novel or unusual design feature(s) associated with side-facing seats. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: January 26, 2001.

FOR FURTHER INFORMATION CONTACT: Les Taylor, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Room 301, Kansas City, Missouri, 816–329–4134, fax 816–329–4090.

SUPPLEMENTARY INFORMATION:

Background

On October 9, 1995, Sino Swearigen Aircraft Company, 1770 Sky Place Boulevard, San Antonio, Texas 78216,

applied for normal category type certificate for their new Model SJ30–2. The Model SJ30–2 airplane is a six-to-eight place, all metal, low-wing, T-tail twin turbofan engine powered airplane with fully enclosed retractable landing gear. The SJ30–2 will have a VMO/MMO of 320 knots/M=.83, and will have engines mounted aft on the fuselage.

The Model SJ30–2 airplane will contain one side-facing seat. Side facing seats are considered a novel design and were not considered when those airworthiness standards were promulgated. The FAA has determined that the existing regulations do not provide adequate or appropriate safety standards for occupants of side-facing single occupant seats. In order to provide a level of safety that is equivalent to that afforded to occupants of forward and aft facing seats, additional airworthiness standards, in the form of additional special conditions, are necessary.

Type Certification Basis

Under the provisions of 14 CFR § 21.17, Sino Swearingen Aircraft Company must show that the Model SJ30–2 meets the applicable provisions of 14 CFR part 23 as amended by Amendments 23–1 through 23–53, and selected portions of 14 CFR part 25 as provided for by 14 CFR part 21, §§ 21.16 and 21.17(a)(2); exemptions, if any; equivalent level of safety findings, if any; and the special conditions adopted by this rulemaking action.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 23) do not contain adequate or appropriate safety standards for the Sino Swearingen Model SJ30–2 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model SJ30–2 must comply with the part 23 fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to Section 611 of Public Law 92–574, the "Noise Control Act of 1972."

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model SJ30–2 will incorporate the following novel or unusual design features: A side-facing seat occupiable for taxi, takeoff and landing.

Discussion of Comments

Notice of proposed special conditions No. 23–00–04–SC for the Sino Swearington, Model SJ30–2, airplanes was published on September 20, 2000 (65 FR 56809). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Sino Swearingen, Model SJ30–2. Should Sino Swearingen apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

The special conditions in the FAA position are acceptable. The conditions requested by the applicant are as follows:

1. The EuroSID–1 ATD as defined in the Applicant's Position is considered an acceptable equivalent for the purposes of the test defined in these special conditions.

2. The applicants position which is consistent with Advisory Circular 23.562–1, page 4, shows a table in which "crew" seats are shown to meet the 19/26G pulses and passenger seats are shown to meet the 15/21 G pulses.

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Sino Swearingen Aircraft Company Model SJ30–2 airplane applicable to side-facing seats occupiable during taxi, takeoff, and landing.

1. Injury Criteria

(a) Existing Criteria: All injury protection criteria of § 23.562(c)(1) through (c)(7) and § 23.785 apply to the occupant of a side facing seat. Head Injury Criteria (HIC) assessments are only required for head contact with either the seat or adjacent structures or both.

(b) Body-to-wall/furnishing contact: The seat must be installed aft of a structure such as an interior wall or furnishing that will support the pelvis, upper arm, chest, and head of an occupant seated next to the structure. Horizontal tests of the seat must include representative structures for the forward wall. The wall must include attachments that represent the geometry, strength, and stiffness of the airplane installation. If there are structures forward of the wall that will affect the deformation of the wall, these structures must be addressed in the test procedure. The contact surface of this structure must be covered with at least two inches of energy absorbing protective foam, such as ensolite.

(c) Thoracic Trauma: Testing with a Side Impact Dummy (SID), as defined by 49 CFR part 572, Subpart F, or its equivalent, must be conducted and Thoracic Trauma Index (TTI) injury criteria acquired with the SID must be less than 85, as defined in 49 CFR part 572, Subpart F. SID TTI data must be processed as defined in Federal Motor Vehicle Safety Standard (FMVSS) Section 571.214, S 6.13.5. Rational analysis, comparing an installation with another installation where TTI data were acquired and found acceptable, may also be viable. The use of the EuroSID–1 as defined by the Official Journal of European Communities, L169 Volume 39, dated July 8, 1996, Directive 96/27/EC and amending Directive 70/156/EEC is considered acceptable for the collection of this data.

(d) Pelvis: Pelvic lateral acceleration must not exceed 130g. Pelvic acceleration data must be processed as defined in FMVSS Section 571.214, S 6.13.5.

2. General Test Guidelines

(a) One test with the SID Anthropomorphic Test Dummy (ATD) or the EuroSID–1, as defined above, undeformed floor, no yaw, and with all lateral structural supports (armrest/walls).

Pass/fail injury assessments: TTI; and pelvic acceleration.

(b) One test with the Hybrid II ATD, or equivalent, deformed floor, with 10 degrees yaw, and with all lateral structural supports (armrest/walls).

Pass/fail injury assessments: HIC; and upper torso restraint system retention and pelvic acceleration.

(c) Vertical test to be conducted with modified Hybrid II ATD's with existing pass/fail criteria.

(d) G-loads used in 2(a), 2(b) and 2(c) are those defined in 14 CFR part 23, § 23.562(b), for first row (crew) and other rows (passenger) seats.

Issued in Kansas City, Missouri on December 11, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–32882 Filed 12–26–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. NE–123; Special Conditions No. 33–004–SC]

Special Conditions: Pratt & Whitney Canada, Inc. (Formerly United Aircraft of Canada, Limited), Model PT6T–9 Turboshaft Engine

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions, request for comments.

SUMMARY: Pratt & Whitney Canada, Inc. (PWC) has applied for an amendment to type certificate (TC) #E22EA, to add a new model PT6T–9 turboshaft engine. The FAA has determined that this new model engine should be viewed as a derivative to the PT6T–3 engine. On June 8, 1970, the FAA issued Special Conditions (SC) No. 33–23–EA–6 for the PT6T–3 turboshaft engine model, and later amended those SC in 1970 to clarify a potential ambiguity in the vibration test requirements. In addition to the requirements contained in SC No. 33–23–EA–6, as amended, these new special conditions provide for 30-second one-engine-inoperative (OEI), 2-minute OEI, and continuous OEI ratings to be included in the PT6T–9 turboshaft engine model power ratings. The special conditions will define the changes to the engine certification basis that are required to establish a level of safety equivalent to the current requirements of 14 CFR part 33, for the new PWC PT6T–9 turboshaft engine model.

DATES: The effective date of these special conditions is December 27, 2000. Comments must be received on or before January 26, 2001.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration (FAA), Office of the Regional Counsel, Attention: Docket No. NE–123; 12 New England Executive Park, Burlington, MA 01803–5299, or delivered in duplicate to the Office of Regional Counsel at the above address. Comments must be marked: Docket No. NE–123. Comments may be inspected at this location on weekdays, except Federal holidays, between 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Chung Hsieh, Aerospace Engineer, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone 781–238–7115, Fax 781–238–7199. If you have access to the Internet, you may also obtain further information by writing to the following Internet address: "*chung.hsieh@faa.gov*".

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the docket number and special conditions number, and be submitted in duplicate to the address specified above, or, if you have access to the internet, you may make a submission to the following Internet address: "*chung.hsieh@faa.gov*". All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed depending on the comments received. All comments received will be available in the docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NE–123." The postcard will be date stamped and returned to the commenter.

Background

On March 28, 2000, Pratt & Whitney Canada, Inc. applied for an amendment to type certificate (TC) E22EA for a new derivative engine, the PT6T–9 turboshaft engine model. The PT6T–9 turboshaft engine configuration is similar to the PT6T–3 series turboshaft engine models. These engines have two identical free-turbine power-sections coupled to a common mixing gearbox module with a single output shaft. The common mixing gearbox module reduces the turbine speed of the power-sections to a single output speed through a pair of overrunning clutches and reduction gearing. In addition, the common mixing gearbox contains a torquemeter for each power-section and a unique and unusual oil system configuration. The oil for engine components requiring continuous lubrication is provided by two independent lubrication systems, one for each of the power-sections, to ensure operation with any one power-section inoperative. The FAA issued Special Conditions (SC) for the PT6T–3 turboshaft engine, SC No. 33–23–EA–6 issued on June 8, 1970, and amended those SC on July 16, 1970 to clarify the vibration test requirements of engine furnished components for the aircraft rotor drive system. The PT6T–9 turboshaft engine model will have 30-second, 2-minute, and continuous one-engine inoperative (OEI) ratings. These OEI ratings will apply to a one power-section inoperative condition. The Special Conditions issued for the PT6T–3 turboshaft engine addressed, among other items, the 30-minute OEI power rating, but not the 30-second, 2-minute, and continuous OEI ratings. The 30-second, and 2-minute OEI power ratings were added to the airworthiness certification standards for aircraft engines, 14 CFR part 33, in 1996. Those new ratings were added to part 33 to enhance rotorcraft safety after an engine failure or precautionary engine shutdown by providing the availability of higher OEI power. The continuous OEI rating has been part of part 33 since 1988 and for the PT6T–9 engine will allow for the continuous operation of the remaining operative power-section at a higher power setting in the event one power-section fails.

The FAA has determined to issue these SC without prior notice and opportunity for comment. The ratings added to the PWC PT6T–9 engine model are substantially similar to ratings added to the PT6T–3 through SC 33–23–EA–6, as amended, and ratings added to part 33 since the original certification of the PT6T–3. An opportunity to comment on these ratings was previously available as part of those previous actions. These SC are required now because as a derivative to the PT6T–3 engine model the PT6T–9 engine will carry a certification basis that pre-dates the amendments to the aircraft engine certification standards that added these new ratings to part 33. Accordingly, these SC are issued to include the new ratings for the PWC PT6T–9 turboshaft engine model.

As part of these SC, the FAA will require PWC to perform two endurance tests on the PT6T–9 turboshaft engine model which are thermal endurance and mechanical endurance. The engine power-section thermal endurance test will be conducted to the power, speed, and temperature limitations as required by § 33.87(a), (d) and (f), as amended through Amendment 18 of part 33. The mechanical endurance test defined in the special conditions will be conducted to substantiate the PT6T–9 turboshaft engine model power train to the requested output speed and torque limitations. Lastly, teardown inspection requirements are added to all tests wherever applicable.

Type Certification Basis

Under the provisions of 14 CFR 21.101, PWC must show either that the PT6T–9 turboshaft engine model meets the requirements of the applicable regulations in effect on the date of the application, or meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. E22EA. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certificate basis." The regulations incorporated by reference in Type Certificate No. E22EA are part 33, dated February 1, 1965, including Amendments 33–1 through 33–4.

The Administrator finds that the applicable airworthiness regulations in part 33, as amended, and the original type certification basis, do not contain adequate or appropriate safety standards for the PT6T–9 turboshaft engine model. Special conditions, as appropriate, are issued in accordance with § 11.38 after public notice, unless the FAA determines that notice would delay the delivery of the affected product or that notice has previously been afforded on a substantially identical proposal. Special conditions become part of the type certification basis of a product in accordance with 14 CFR 21.101(b)(2).

Novel or Unusual Design Features

The Pratt & Whitney engine model PT6T–9 turboshaft engine model incorporates two power-sections coupled to a common gearbox, and will have engine ratings for 30-second OEI, 2-minute OEI, and continuous OEI operations when one power-section is inoperative. The requirements of the original type certification basis do not provide adequate or appropriate safety standards for these novel and unusual design features. Therefore, these special conditions are intended to establish a level of safety equivalent to the existing airworthiness standards. These special conditions provide additional safety standards for the PWC PT6T–9 turboshaft engine model in the following areas:

a. Endurance test.
b. Clutch engagement.
c. Overspeed test.
d. Maximum torque test.
e. Oil Flow interruption.
f. Power section isolation.
g. Critical component reliability.

Applicability

These special conditions are applicable to the PWC PT6T–9 series turboshaft engine. Should PWC apply at a later date for an amended type certificate to add additional engine models to TC E22EA that are substantially similar to the PT6T–9 series engine and that have the same novel and unusual design features, these special conditions would apply to those models as well under the provisions of 14 CFR 21.101(a)(1), and be included in the type certification basis for those additional models.

Conclusion

This action affects only certain novel and unusual design features on one model of engines. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the engine.

List of Subjects in 14 CFR Part 33

Air Transportation, Aircraft, Aviation Safety, Safety.

The authority citations for these special conditions is as follows:

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

The Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the PWC PT6T–9 turboshaft engine model.

(a) *Definitions:* Unless otherwise approved by the Administrator and documented in the appropriate manuals and certification documents, for the purpose of these special conditions the following definitions apply to the PT6T–9 turboshaft engine model.

(1) One power-section (OPS): One of two free turbine turbomachines mounted to a combining gearbox of a turboshaft engine. The PWC PT6T–9 turboshaft engine model consists of two free turbine turbomachines coupled to a combining gearbox.

(2) OPS One Engine Inoperative (OEI) power: The rated engine power for operation with one power-section inoperative.

(b) *Mechanical test:* In addition to the requirements of § 33.87, the following mechanical test must be conducted: This test will substantiate the speed and torque limitations for the PT6T–9 turboshaft engine model drive train, from the power turbine rotor through the gearbox, to the engine output shaft. In place of the operating time cycles specified in § 33.87(a)(d) and (f), the engine must be subject to a mechanical endurance test as prescribed in paragraphs (b)(1) through (b)(8) of this section. This must include at least 232 hours and 20 minutes of operation, consisting of 20 cycles of 11 hours and 37 minutes each as follows:

(1) *Takeoff and ideling:* One hour of alternate 5 minute periods of takeoff torque, and 5 minutes at the lowest and most practicable engine idle speed. Output shaft speed must be maintained at rated rpm throughout. In complying with this paragraph, the power level must be moved from one extreme position to the other in no more than one second. Immediately following every 5-minute power-on-run, simulate a failure for each power section by applying the maximum torque and the maximum speed for use with 30-second OPS OEI power to the remaining reduction gearbox (RGB) power input for no less than 30 seconds. Each application of 30-second OPS OEI power must be followed by two applications of the maximum torque and the maximum speed for use with the 2-minute OPS OEI power for no less than 2 minutes each. The second application must follow a period at stabilized continuous OPS OEI power. At least one run sequence must be conducted from a simulated "flight idle" condition.

(2) *Rated maximum continuous:* three hours at rated maximum continuous

torque must be conducted at maximum continuous speed.

(3) *90 percent rate maximum continuous:* One hour at 90 percent rate maximum continuous torque must be conducted at maximum speed for use without maximum continuous torque.

(4) *80 percent rated maximum continuous:* One hour at 80 percent rated maximum continuous torque must be conducted at minimum speed for use with maximum continuous torque.

(5) *60 percent rated maximum continuous:* One hour at 60 percent rated maximum continuous torque must be conducted at minimum speed for use with maximum continuous torque.

(6) *Engine malfunctioning run:* It must be determined if a malfunction of engine components, such as the engine fuel or torque limiters, or if unequal power section power can cause dynamic conditions detrimental to the common gearbox parts and clutches. If a detrimental condition(s) exists, a suitable number of hours of operation must be accomplished under those conditions, 1 hour of which must be included in each cycle, and the remaining time must be accomplished at the end of the 20 cycles. If no detrimental condition results, an additional hour of operation must be conducted in compliance with paragraph (b)(1) excluding the OPS OEI power portions.

(7) *Overspeed run:* One hour of continuous operation at 110 percent of rated maximum continuous output speed must be conducted at maximum continuous torque. If the power sections are limited to an overspeed of less than 110 percent of maximum continuous speed, the speed used must be the highest speed allowable for those power sections.

(8) *Continuous OPS OEI power runs:* In sequence, and for each power section of the engine, a power section must be inoperative while the remaining power section is run for 1 hour and 14 minutes. The power section that is running must use continuous OPS OEI torque at maximum speed. The teardown inspection after completing the mechanical endurance test must comply with the requirements of § 33.93(a).

(c) *Clutch engagements.* In addition to the requirements of § 33.91, a minimum of 400 clutch engagements, including the engagements of paragraph (b)(1) of these special conditions must be made during the takeoff power runs. If it is necessary, engagements should be made at each change of power and speed throughout the test. In each engagement, the shaft on the driven side of the clutch must be accelerated from rest or an unloaded condition that is representative of engine operation. This test may be conducted concurrently with the mechanical endurance test. The teardown inspection after completing the clutch engagement test must comply with the requirements of § 33.93(a).

(d) *Overspeed test.* The endurance test of paragraph (b) of these special conditions must be completed before performing this test under the requirements of § 33.89, and without intervening major disassembly. The output gearbox must be subjected to 50 overspeed runs, each 30 ± 3 seconds in duration at 120 percent of rated maximum continuous speed. These runs must be conducted as follows:

(1) Overspeed runs must be alternated with stabilizing runs of 60 to 80 percent of maximum continuous speed.

(2) Acceleration and deceleration must be accomplished in a period not longer than 10 seconds, and the time for changing speeds may not be deducted from the specified time for the overspeed runs. If the power section are limited by the applicant to an overspeed of less than 120 percent of maximum continuous speed for the periods required, the highest allowable speed must be used for the power sections involved. The teardown inspection after completing the overspeed test mut comply with the requirements of § 33.93(a).

(e) *Maximum torque test.* When performing the requirements of § 33.89 for maximum torque operation, the maximum power section output of the engine must be substantiated as follows:

(1) Under conditions associated with all power sections operating, perform 200 applications, for 10 seconds each, of torque that is, at a minimum, equal to the lesser of (i) and (ii):

(i) The maximum torque used in meeting the endurance test plus 10 percent or;

(ii) The maximum torque attainable under probable operating conditions, assuming that torque limiting devices, if any, function properly.

(2) With the critical power sections inoperative, apply the maximum torque attainable under probable operating conditions, assuming that torque limiting devices, if any, function properly. Each gearbox input must be tested at this maximum torque for at least 15 minutes. The teardown inspection after completing the maximum torque test must comply with the requirements of § 33.93.

(f) *Oil flow interruption.* In addition to the requirements of § 33.71, the mixing gearbox must be operated at zero oil pressure and 100 percent output speed for at least 5 minutes without seizure.

(g) *Power section isolation.* The power sections and their systems, including fuel, oil and control systems, must be arranged and isolated from each other to allow operation, in at least one configuration. Consequently, the failure or malfunction of any power section, or the failure of any system that can affect any power section, will not prevent the continued safe operation of the remaining power section. For the purpose of these special conditions, a power section failure is interpreted to not include an uncontained failure, such as an uncontained power section rotor burst.

(h) *Critical component reliability.* In addition to the vibration tests specified in § 33.83, the vibration load/stress limits of engine-furnished critical components of the rotor drive system must be investigated. This investigation must include the following: (1) The gearbox case and each component in the mixing gearbox whose failure would cause an uncontrolled landing.

(2) Each component common to the two power sections.

(3) Components provided as a part of the engine necessary to transmit power from the power section shaft to and through the engine output shaft. This includes components such as gearboxes, shafting, couplings, rotor brake assemblies, clutches, supporting bearings for shafting, and any attendant accessory pads or drives.

Issued in Burlington, Massachusetts on December 8, 2000.

David A. Downey,

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

[FR Doc. 00–32883 Filed 12–26–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–227–AD; Amendment 39–12050; AD 2000–15–17 R1]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–987 (MD–87); Model MD–88 Airplanes; and Model MD–90–30 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error that appeared in airworthiness directive (AD) 2000–15–17 that was published in the **Federal Register** on August 8, 2000 (65 FR 48368). The typographical error resulted in the omission of an airplane model from paragraph (c) of the AD. This AD is applicable to certain McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87); Model MD–88 airplanes; and Model MD–90–30 series airplanes. This AD requires installation of a pipe support and clamps on the hydraulic lines in the aft fuselage; replacement of the hydraulic pipe assembly in the aft fuselage with a new pipe assembly; and installation of drain tube assemblies and diverter assemblies in the area of the auxiliary power unit inlet; as applicable.

DATES: Effective September 12, 2000.

FOR FURTHER INFORMATION CONTACT: Albert Lam, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5346; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Airworthiness Directive (AD) 2000–15–17, amendment 39–11849, applicable to certain McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87); Model MD–88 airplanes; and Model MD–90–30 series airplanes, was published in the **Federal Register** on August 8, 2000 (65 FR 48368). That AD requires installation of a pipe support and clamps on the hydraulic lines in the aft fuselage; replacement of the hydraulic pipe assembly in the aft fuselage with a new pipe assembly; and installation of drain tube assemblies and diverter assemblies in the area of the auxiliary power unit (APU) inlet; as applicable.

As published, that AD contained a typographical error in paragraph (c) of the AD, which resulted in the omission of Model MD–88 airplanes from its applicability. It was the FAA's intent that the applicability of paragraph (c) of the AD be parallel to that recommended by the manufacturer in its referenced service bulletin (*i.e.*, McDonnell Douglas Service Bulletin MD80–53–286, dated September 3, 1999). As was indicated under the heading "Explanation of Relevant Service Information" in the preamble of the notice of proposed rulemaking (NPRM), McDonnell Douglas Service Bulletin MD80–53–286, dated September 3, 1999, affects McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes, and Model MD–88 airplanes.

Since no other part of the regulatory information has been changed, the final rule is not being republished.

The effective date of this AD remains September 12, 2000.

§ 39.13 [Corrected]

On page 48371, in the first column, paragraph (c) of AD 2000–15–17 is corrected to read as follows:

2000–15–17 McDonnell Douglas: Amendment 39–11849. Docket 99–NM–227–AD.

* * * * *

(c) For Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes, and Model MD–88 airplanes, as listed in McDonnell Douglas Service Bulletin MD80–53–286, dated September 3, 1999; and Model MD–90–30 series airplanes, as listed in McDonnell Douglas Service Bulletin MD90–53–018, dated September 3, 1999: Within 36 months after the effective date of this AD, install drain tube assemblies and diverter assemblies in the area of the APU inlet, in accordance with the applicable service bulletin.

* * * * *

Issued in Renton, Washington, on December 18, 2000.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–32761 Filed 12–26–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AWP–8]

Modification of Class E Airspace; Willits, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule, correction.

SUMMARY: This action corrects an error in the radial distance of the 1,200 foot airspace area of a Final Rule that was published in the **Federal Register** on November 2, 2000 (65 FR 65731), Airspace Docket No. 00–AWP–8.

EFFECTIVE DATE: 0901 UTC January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6611.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 00–28188, Airspace Docket No. 00–AWP–8, published on April 20, 1998 (65 FR 65731), revised the geographic coordinates and radial distance of the Class E airspace area at Willits, CA. A typographical error was discovered in the radial distance of the 1,200 foot airspace area for the Willits, CA, Class E airspace area. This action corrects those errors.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, for the Class E airspace area at Willits, CA, as published in the **Federal Register** on November 2, 2000 (65 FR 65731), (**Federal Register** Document 00–28188; page 65732, column 2 is corrected as follows:

§ 71.1 [Corrected]

* * * * *

AWP CA E5 Willits, CA [Corrected]

Ells Field-Willits Municipal Airport, CA
(lat. 39°27′03″N, long. 123°22′20″W)

By removing "(and that airspace extending upward from 1,200 feet above the surface with a 39-mile radius of the Ells Field-Willits Municipal Airport.)" and substituting "(and that airspace extending upward from 1,200 feet above the surface within a 38-mile radius of the Ells Field-Willits Municipal Airport)".

* * * * *

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 00–32884 Filed 12–26–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASW–6]

RIN 2120–AA66

Amendment of Legal Description of V–66 in the Vicinity of Dallas/Fort Worth; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** on October 16, 2000. In the legal description of V–66, a portion of the

airway from Tuscaloosa, AL, to Franklin, VA, was inadvertently deleted. This action corrects that error.

EFFECTIVE DATE: December 27, 2000.

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

SUPPLEMENTARY INFORMATION: On October 16, 2000, Airspace Docket No. 00–ASW–6, FR Doc. 00–26512, was published revising thirteen Federal airways in the vicinity of Dallas/Fort Worth, TX. In the legal description of V–66, a portion of the airway from Tuscaloosa, AL, to Franklin, VA, was inadvertently deleted. The FAA corrects this action by adding that portion of the legal description that was deleted.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for V–66 as published in the **Federal Register** on October 16, 2000 (65 FR 61088); FR Doc. 00–26512, and incorporated by reference in 14 CFR 71.1, is corrected as follows:

§ 71.1 [Corrected]

On page 61088 in the third column, correct the legal description of V–66 to read as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–66 [Corrected]

From Mission Bay, CA; Imperial, CA; 13 miles, 24 miles, 25 MSL; Bard, AZ; 12 miles, 35 MSL; INT Bard 089° and Gila Bend, AZ, 261° radials; 46 miles, 35 MSL; Gila Bend; Tucson, AZ, 7 miles wide (3 miles south and 4 miles north of centerline); Douglas, AZ; INT Douglas 064° and Columbus, NM, 277° radials; Columbus; El Paso, TX; 6 miles wide; INT El Paso 109° and Hudspeth 287° radials; 6 miles wide; Hudspeth; Pecos, TX; Midland, TX; INT Midland 083° and Abilene, TX, 252° radials; Abilene; to Millsap, TX. From Tuscaloosa, AL, Brookwood, AL; LaGrange, GA; INT LaGrange 120° and Columbus, GA, 068° radials; INT Columbus 068° and Athens, GA, 195° radials; Athens; Greenwood, SC; Sandhills, NC; Raleigh-Durham, NC; Franklin, VA, excluding the airspace above 13,000 feet MSL from the INT of Tucson, AZ, 122° and Cochise, AZ, 257° radials to the INT of Douglas, AZ, 064° and Columbus, NM, 277° radials.

* * * * *

Issued in Washington, DC, on December 18, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–32881 Filed 12–26–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 125

[Docket Nos. 121–271, 121–278, 125–32 & 125–34]

RIN 2120–AG–88

Corrections to Flight Data Recorder Specifications

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects errors introduced into the flight data recorder specifications in two final rules. The FAA intended to add certain information by footnote in the appendices that contain the flight recorder specification charts, but inadvertently caused material to be deleted. This correction reinstates that material.

DATES: Effective December 27, 2000.

FOR FURTHER INFORMATION CONTACT: Karen Petronis, Senior Attorney for Regulations, AGC–200, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone 202–267–3073.

SUPPLEMENTARY INFORMATION: The FAA published final rule amending the flight data recorder specifications for certain Airbus airplanes in the **Federal Register** on August 24, 1999 [64 FR 46117]. The intent of that final rule was to establish different criteria for certain flight data recorder parameters that are recorded by Airbus airplanes. The changes were introduced as footnotes. The footnote numbers were to appear with the name of the parameter in the "Parameters" columns of 14 CFR part 121 appendix M and part 125 appendix E.

Instead of inserting the footnotes numbers in the column and adding the noted information at the bottom of the chart, the amendatory language that was used resulted in information being deleted from the five remaining columns of the chart for each of the parameters affected by the rule. A similar attempted amendment in August 2000 [65 FR 51745, August 24, 2000] caused the same result.

Accordingly, the FAA is republishing the affected parameter specifications to reinstate them in the appendix M chart. The identical corrections are being made to Part 125 Appendix E, which contains the identical information. The FAA never intended to change any of the information that was effective at the time of the August 1999 final rule, and no intent may be implied by the absence of this information from the printed 2000 CFR. The FAA has no information to suggest that any operator subject to the affected regulations has taken any action based on the unintended deletion of the information. The required specifications are well established and not easily changed in operational flight data recorder system equipment.

Since no rule change was ever intended, there is no economic impact that is attributable to this correction.

Any operator that finds itself adversely affected by reliance on any omission from the 2000 CFR is advised to contract the FAA immediately for resolution of any problems.

Accordingly, the Federal Aviation Administration amends Title 14 of the Code of Federal Regulations parts 121 and 125 as follows:

Part 121 [Corrected]

Appendix M [Corrected]

1. Correct Appendix M to part 121, by revising item numbers, 1, 7, 9, 12b, 13b, 14a, 15, 16, 17, 19, 20, 21, 23, 24, 37, 42 and 57 to read as follows (**Note:** The footnote text remains unchanged):

Parameters	Range	Accuracy (sensor input)	second per sampling interval	Resolution	Remarks
1. Time or Relative Times Counts.[1].	24 Hrs, 0 to 4095	+/−0.125% Per Hour	4	1 sec	UTC time preferred when available. Count increments each 4 second of system operation.
7. Roll attitude[2]	+/−180°	+/−2°	1 or 0.5 for airplanes operated under § 121.344(f).	0.5	A sampling rate of 0.5 is recommended.

Parameters	Range	Accuracy (sensor input)	second per sampling interval	Resolution	Remarks
9. Thrust/Power on Each Engine—primary flight crew reference.[14].	Full Range Forward ..	+/−2%	1 (per engine)	0.2% of full range	Sufficient parameters (e.g. EPR, NI or Torque, NP) as appropriate to the particular engine be recorded to determine power in forward and reverse thrust, including potential over-speed condition.
12b. Pitch Control(s) position (fly-by-wire systems).[3].	Full Range	+/−2° Unless Higher Accuracy Uniquely Required..	0.5 or 0.25 for airplanes operated under § 121.344(f)..	0.2% of full range	
13b. Lateral Control position(s) (fly-by-wire).[4].	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under § 121.344(f).	0.2% of full range	
14a. Yaw Control position(s) (non-fly-by-wire).[5].	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5	0.2% of full range	For airplanes that have a flight control break away capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5.
15. Pitch Control Surface(s) Position.[6].	Full Range	+/−° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under § 121.344(f).	0.2% of full range	For airplanes fitted with multiple or split surfaces, a suitable combination of inputs is acceptable in lieu or recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5 or 0.25.
16. Lateral Control Surface(s) Position.[7].	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under § 121.344(f).	0.2% of full range	A suitable combination of surface position sensors is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5 or 0.25.
17. Yaw Control Surface(s) Position.[8].	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5	0.2% of full range	For airplanes with multiple or split surfaces, a suitable combination of surface position sensors is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sapling interval of 0.5.
19. Pitch Trim Surface Position.[9].	Full Range	+/−3° Unless Higher Accuracy Uniquely Required.	1	0.3% of full range	

Parameters	Range	Accuracy (sensor input)	second per sampling interval	Resolution	Remarks
20. Trailing Edge Flap or Cockpit Control Selection.[10].	Full Range or Each Position (discrete).	+/−3° or as Pilot's indicator.	2	0.5% of full range	Flap position and cockpit control may each be sampled at 4 second intervals, to give a data point every 2 seconds.
21. Leading Edge Flap or Cockpit Control Selection.[11].	Full Range or Each Discrete Position.	+/−3° or as Pilot's indicator and sufficient to determine each discrete position.	2	0.5% of full range	Left and right sides, or flap position and cockpit control may each be sampled at 4 second intervals, so as to give a data point every 2 seconds.
23. Ground Spoiler Position or Speed Brake Selection.[12].	Full Range or Each Position (discrete).	+/−2° Unless Higher Accuracy Uniquely Required.	1 or 0.5 for airplanes operated under §121.344(f).	0.2% of full range	
24. Outside Air Temperature or Total Air Temperature.[13].	−50°C to +90°C	+/−2°C	2	0.3°C	
37. Drift Angle.[15]	As installed	As installed	4	0.1°	
42. Throttle/power Leverl position.[16].	Full Range	+/−2%	1 for each lever	2% of full range	For airplanes with non-mechanically linked cockpit engine controls.
57. Thrust command.[17].	Full Range	+/−2%	2	2% of full range.	

Part 121 [Corrected]

Appendix E [Corrected]

2. Correct appendix E to part 125, by revising item numbers 1, 7, 9, 12b, 13b, 14a, 15, 16, 17, 19, 20, 21, 23, 24, 37, 42 and 57 to read as follows (**Note:** The footnote text remains unchanged):

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
1. Time or Relative Times Counts.[1].	24 Hrs, 0 to 4095	+/−0.125% Per Hour	4	1 sec	UTC time preferred when available. Count increments each 4 seconds of system operation.
7. Roll Attitude[2]	+/−180°	+/−2°	1 or 0.5 for airplanes operated under §121.344(f).	0.5°	A sampling rate of 0.5 is recommended.
9. Thrust/Power on Each Engine-primary flight crew reference.[14].	Full Range Forward.	+/−2%	1 (per engine)	0.2% of full range	Sufficient parameters (*e.g.* EPR, N1 or Torque, NP) as appropriate to the particular engine be recorded to determine power in forward and reverse thrust, including potential over-speed condition.
12b. Pitch Control(s) position (fly-by-wire systems).[3].	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under §121.344(f).	0.2% of full range	
13b. Lateral Control position(s) (fly-by-wire).[4].	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under §121.344(f).	0.2% of full range	

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
14a. Yaw Control position(s) (non-fly-by-wire).[5].	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5	0.2% of full range	For airplanes that have a flight control break away capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5.
15. Pitch Control Surface(s) Position.[6].	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under § 121.344(f).	0.2% of full range	For airplanes fitted with multiple or split surfaces, a suitable combination of inputs is acceptable in lieu or recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5 or 0.25.
16. Lateral Control Surface(s) Position.[7].	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under § 121.344(f).	0.2% of full range	A suitable combination of surface position sensors is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5 or 0.25.
17. Yaw Control Surface(s) Position.[8].	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5	0.2% of full range	For airplanes with multiple or split surfaces, a suitable combination of surface position sensors is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sapling interval of 0.5.
19. Pitch Trim Surface Position.[9].	Full Range	+/−3° Unless Higher Accuracy Uniquely Required.	1	0.3% of full range	
20. Trailing Edge Flap or Cockpit Control Selection.[10].	Full Range or Each Position (discrete).	+/−3° or as Pilot's indicator.	2	0.5% of full range	Flap position and cockpit control may each be sampled at 4 second intervals, to give a data point every 2 seconds.
21. Leading Edge Flap or Cockpit Control Selection.[11].	Full Range or Each Discrete Position.	+/−3° or as Pilot's indicator and sufficient to determine each discrete position.	2	0.5% of full range	Left and right sides, or flap position and cockpit control may each be sampled at 4 second intervals, so as to give a data point every 2 seconds.
23. Ground Spoiler Position or Speed Brake Selection.[12].	Full Range or Each Position (discrete).	+/−2° Unless Higher Accuracy Uniquely Required.	1 or 0.5 for airplanes operated under § 121.344(f).	0.2% of full range	

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
24. Outside Air Temperature or Total Air Temperature.[13].	−50°C to +90°C	+/−2°C	2	0.3°C.	
37. Drift Angle.[15]	As installed	As installed	4	0.1%.	
42. Throttle/power lever position.[16].	Full Range	+/−2%	1 for each lever	2% of full range	For airplanes with non-mechanically linked cockpit engine controls.
57. Thrust command.[17].	Full Range	+/−2%	2	2% of full range	

Issued in Washington, DC, on December 18, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 00–32730 Filed 12–26–00; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

[Release No. IA–1916; 34–43758; File No. S7–10–00]

RIN 3235–AI04

Electronic Filing by Investment Advisers; Amendments to Form ADV; Technical Amendments

AGENCY: Securities and Exchange Commission.

ACTION: Technical amendments to final regulations.

SUMMARY: The Commission is making technical revisions to Forms ADV, ADV–W, ADV–H ADV–NR and related rules under the Investment Advisers Act of 1940 ("Advisers Act"). These revisions are administrative corrections to amendments adopted by the Commission in Electronic Filing by Investment Advisers; Amendments to Form ADV, Investment Advisers Act Release No. 1897 (Sept. 12, 2000) [65 FR 57438 (Sept. 22, 2000)].

EFFECTIVE DATE: The rule and form corrections will become effective on January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Jennifer B. McHugh, Special Counsel, at (202) 942–0691, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0506.

I. Supplementary Information

We recently adopted new rules and rule amendments under the Advisers Act to require that investment advisers make filings electronically through the Investment Adviser Registration Depository (IARD).[1] We also amended Forms ADV and ADV–W to prepare them for electronic filing. At the same time, we adopted Form ADV–H, an application for a hardship exemption from electronic filing, and Form ADV–NR, an appointment of agent for service of process by non-resident general partners and managing agents of investment advisers.

Following adoption of the amendments, we conducted an IARD Pilot Program to test the operation of the new filing system prior to the January 1, 2001 transition to electronic filing. The Pilot Program ran from October 17, 2000 through November 9, 2000. Approximately 100 SEC-registered advisers participated in the Pilot Program.

During the Pilot Program, the Commission staff held weekly conference calls with Pilot filers and operated a telephone hotline to answer Pilot filers' questions. The Pilot filers' feedback raised certain administrative issues regarding our new investment adviser rules and forms. We therefore are making minor technical amendments to the rules and forms to address these administrative issues. The technical amendments, which are outlined in detail below, generally (i) clarify filing instructions in the rules and forms, (ii) provide notice to filers of administrative law requirements, and (iii) eliminate minor internal inconsistencies within these forms.

II. Certain Findings Under The Administrative Procedure Act

Under the Administrative Procedure Act ("APA"), notice of proposed rulemaking is not required when an agency for good cause finds "that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."[2] Because the amendments adopted today only clarify instructions, provide additional notices to filers and eliminate administrative inconsistencies in the forms, the Commission believes they are the sort of minor rule amendments about which the public is not particularly interested. Consequently, the Commission finds that publishing these amendments for comment is unnecessary.

The effective date for the technical amendments is January 1, 2001. Under the APA, we may establish an effective date less than 30 days after the publication of the amendments if we find good cause to do so.[3] We have required that advisers begin using revised forms on January 1, 2001. On that date, advisers will begin transitioning to electronic filing through IARD. We believe the rules and forms should be corrected as of the date advisers begin using them. Because the amendments are technical and do not have a significant substantive impact, we have determined that the need for an administratively efficient transition to electronic filing through IARD outweighs any possible disadvantage to investment advisers from having these amendments become effective with less than 30 days' notice. Therefore, we find that there is good cause for these technical amendments to become effective on January 1, 2001.

III. Correction of Publication

PART 275—[CORRECTED]

Accordingly, the publication on September 22, 2000 of the final regulations (IA–1897), which were the subject of FR Doc. 00–23888, is corrected as follows:

§ 275.203–1 [Corrected]

1. On page 57448, in the third column, in § 275.203–1, in the Note to Paragraph (b)(2), in the twelfth and thirteenth lines, the phrase "If you are a State-registered adviser," is removed.

[1] Electronic Filing by Investment Advisers; Amendments to Form ADV, Investment Advisers Act Release No. 1897 (Sept. 12, 2000)[65 FR 57438 (Sept. 22, 2000)]. The IARD is an Internet-based system for investment adviser registration.

[2] 5 U.S.C. 553(b)

[3] 5 U.S.C. 553(d)(3).

§ 275.203–3 [Corrected]

2. On page 57449, in the first column, in § 275.203–3, in paragraph (a)(1), in the third line, after "registered", the phrase "or are registering" is added.

3. On page 57449, in the second column, in § 275.203–3, in paragraph (a)(2)(i), in the second and third lines, the phrase " NASD Regulation, Inc. (NASDR)" is removed.

4. On page 57449, in the second column, in § 275.203–3, in paragraph (a)(3), in the fourth line, the phrase "with NASDR" is removed.

5. On page 57449, in the second column, in § 275.203–3, in paragraph (b)(2), in the third and fourth lines, the phrase "with NASDR" is removed.

6. On page 57449, in the second column, in § 275.203–3, in paragraph (b)(3), in the seventh line, "NASDR" is removed and in its place "NASD Regulation, Inc." is added.

7. On page 57449, in the second column, in § 275.203–3, in the Note to Paragraphs (a) and (b), in the first line, "Paragraphs (a) and" is removed and in its place "Paragraph" is added.

§ 275.204–1 [Corrected]

8. On page 57450, in the third column, in § 275.204–1, in the Note to Paragraph (c), in the twelfth and thirteenth lines, the phrase "If you are a State-registered adviser," is removed.

Form ADV (referenced in § 279.1) [Corrected]

9. On page 57453, in the first column, in the fourth paragraph, in the third line, the phrase "file the paper version of Form ADV with" is revised to read "submit the paper version of Form ADV to".

10. On page 57453, in the second column, following instruction number 16, after the bolded paragraph, the heading *"Federal Information Law and Requirements"* and the paragraph that follows are revised to read as follows:

Privacy Act Statement

Sections 203(c) and 204 of the Advisers Act (15 U.S.C. 80b–3(c) and 80b–4) authorize the SEC to collect the information required by Form ADV. The SEC collects the information for regulatory purposes, such as deciding whether to grant registration. Filing Form ADV is mandatory for advisers who are required to register with the SEC. The SEC maintains the information submitted on this form and makes it publicly available. The SEC may return forms that do not include required information. Intentional misstatements or omissions constitute federal criminal violations under 18 U.S.C. 1001 and 15 U.S.C. 80b–17.

11. On page 57453, in the second column, in the second paragraph under the heading *"SEC's Collection of Information"*, in the fifth line before "The form is filed", the sentence "By accepting a form, however, the SEC does not make a finding that it has been completed or submitted correctly." is added.

12. On page 57462, in Item 3.B, "On the last day of" is removed and in its place "In" is added.

13. On page 57463, in Item 5.A, in the parenthetical at the end of the Item, "100" is removed and in its place "1,000" is added.

14. On page 57463, in Item 5.B(1), in the parenthetical at the end of the Item, "100" is removed and in its place "1,000" is added.

15. On page 57463, in Item 5.B(2), in the parenthetical at the end of the Item, "100" is removed and in its place "1,000" is added.

16. On page 57464, in Item 5.B(3), in the parenthetical at the end of the Item, "100" is removed and in its place "1,000" is added.

17. On page 57464, in Item 5.C, in the parenthetical at the end of the Item, "100" is removed and in its place "500" is added.

18. On page 57466, in Item 5.H, in the parenthetical at the end of the Item, "100" is removed and in its place "500" is added.

19. On page 57467, in Item 7.A, in the last sentence of the Item, the phrase "investment advisers with which you are affiliated" is revised to read "your related persons that are investment advisers."

20. On page 57474, after Item 2.A and before "Item 2.B. Bond/Capital Information, if required by your home state." the following is added:

If this address is a private residence, check this box: ☐

21. On page 57478, in Instruction number 4, in the second line, after "or "I" if the owner", the phrase "or executive officer" is added.

22. On page 57512, in the first column, the second to last full paragraph, "I certify that investment adviser will, within five days of a state's request, provide to that state a copy of the investment adviser's Form ADV Part II." is removed.

PART 279—[CORRECTED]

Form ADV–W (referenced in § 279.2) [Corrected]

23. On page 57514, at the top of the third column, before "SEC's COLLECTION OF INFORMATION.", the following paragraph is added:

PRIVACY ACT STATEMENT. Section 203(h) of the Advisers Act (15 U.S.C. 80b–3(h)) authorizes the Commission to collect the information required by Form ADV–W. The Commission collects this information for regulatory purposes, such as reviewing an adviser's application to withdraw. Filing Form ADV–W is mandatory for an investment adviser to withdraw from registration. The Commission maintains the information submitted on Form ADV–W and makes it publicly available. The Commission may return forms that do not include required information. Intentional misstatements or omissions constitute federal criminal violations under 18 U.S.C. 1001 and 15 U.S.C. 80b–17. The information contained in Form ADV–W is part of a system of records subject to the Privacy Act of 1974, as amended. The Commission has published in the **Federal Register** the Privacy Act System of Records Notice for these records.

24. On page 57514, in the third column, in the paragraph titled "SEC's COLLECTION OF INFORMATION.", in the seventeenth line, after "withdrawal.", add the following sentence "By accepting a form, however, the SEC does not make a finding that it has been completed or submitted correctly."

25. On page 57514, in the third column, remove the last sentence.

Form ADV–H (referenced in § 279.3) [Corrected]

26. On page 57522, at the end of the paragraph under Item 4, How to Submit Your Form ADV–H, the address "NASD Regulation, Inc., P.O. Box 9495, Gaithersburg, MD 20898–9495." is removed and in its place "U.S. Securities and Exchange Commission, Office of Registrations and Examinations, Mail Stop 0–25, 450 Fifth Street, N.W., Washington, DC 20549." is added.

27. On page 57522, before "SEC'S COLLECTION OF INFORMATION.", the following paragraph is added:

PRIVACY ACT STATEMENT. Section 203(c)(1) of the Advisers Act (15 U.S.C. 80b–3(c)(1)) authorizes the Commission to collect the information required by Form ADV–H. The Commission collects this information for regulatory purposes, such as processing requests for

temporary hardship exemptions and determining whether to grant a continuing hardship exemption. Filing Form ADV–H is mandatory for investment advisers requesting a temporary or continuing hardship exemption. The Commission maintains the information submitted on Form ADV–H and makes it publicly available. The Commission may return forms that do not include required information. Intentional misstatements or omissions constitute federal criminal violations under 18 U.S.C. § 1001 and 15 U.S.C. § 80b–17. The information contained in Form ADV–H is part of a system of records subject to the Privacy Act of 1974, as amended. The Commission has published in the **Federal Register** the Privacy Act System of Records Notice for these records.

28. On page 57522, at the bottom of the page, in the paragraph titled "SEC'S COLLECTION OF INFORMATION.", in the fifth line, after "grant a continuing hardship exemption.", add the sentence "By accepting a form, however, the Commission does not make a finding that it has been completed or submitted correctly."

29. On page 57522, remove the last sentence on that page.

Form ADV–NR (referenced in § 279.4) [Corrected]

30. On page 57524, at the bottom of the page, after "Adviser CRD Number:_____ ", add "Adviser SEC File Number: 801–_____".

31. On page 57524, after "Adviser Name:_____", the following paragraphs are added:

PRIVACY ACT STATEMENT. Section 211(a) of the Advisers Act (15 U.S.C. 80b–11(a)) authorizes the Commission to collect the information required by Form ADV–NR. The Commission collects this information to ensure that a non-resident general partner or managing agent of an investment adviser appoints an agent for service of process in the United States. Filing Form ADV-NR is mandatory for non-resident general partners or managing agents of investment advisers. The Commission maintains the information submitted on Form ADV–NR and makes it publicly available. The Commission may return forms that do not include required information. Intentional misstatements or omissions constitute federal criminal violations under 18 U.S.C. 1001 and 15 U.S.C. 80b–17. The information contained in Form ADV–NR is part of a system of records subject to the Privacy Act of 1974, as amended. The Commission has published in the **Federal Register** the Privacy Act System of Records Notice for these records.

SEC'S COLLECTION OF 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 control number. Section 211(a) of the Advisers Act authorizes the Commission to collect the information on this Form from applicants. *See* 15 U.S.C. 80b–11(a). Filing of this Form is mandatory for non-resident general partners or managing agents of investment advisers. The principal purpose of this collection of information is to ensure that a non-resident general partner or managing agent of an investment adviser appoints an agent for service of process in the United States. The Commission will maintain files of the information on Form ADV–NR and will make the information publicly available. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on page one of Form ADV–NR, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. 3507.

Dated: December 21, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–32942 Filed 12–26–00; 8:45 am]

BILLING CODE 8010–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 50

Protection of Human Subjects

CFR Correction

In Title 21 of the Code of Federal Regulations, parts 1 to 99, revised as of April 1, 2000, on page 278, §50.3 is corrected by removing and reserving paragraph (b)(11).

[FR Doc. 00–55520 Filed 12–26–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310, 312, and 314

Drugs for Human Use

CFR Correction

In Title 21 of the Code of Federal Regulations, parts 300 to 499, revised as of April 1, 2000, make the following corrections:

1. On page 56, §310.545 is corrected by adding paragraph (d)(2) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over–the–counter (OTC) for certain uses.

* * * * *

(d) * * *

(2) February 10, 1992, for products subject to paragraph (a)(20) of this section.

* * * * *

2. On page 61, §312.3(b) is corrected by revising the definition for "Marketing application" to read as follows:

§ 312.3 Definitions and interpretations.

* * * * *

(b) * * *

Marketing application means an application for a new drug submitted under section 505(b) of the act or a biologics license application for a biological product submitted under the Public Health Service Act.

* * * * *

3. In part 314, in both the table of contents on page 97, and in the text on page 165, add "Subpart F [Reserved]".

[FR Doc. 00–55519 Filed 12–26–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF STATE

22 CFR Part 126

General Policies and Provisions

CFR Correction

In Title 22 of the Code of Federal Regulations, parts 1 to 299, on page 466, first column, § 126.1(a) is corrected by removing "Ukraine" from the second sentence.

[FR Doc. 00–55521 Filed 12–26–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 818

Personal Financial Responsibility

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule, removal.

SUMMARY: The Department of the Air Force is amending the Code of Federal Regulations (CFR) by removing its rule on Personal Financial Responsibility. This rule is removed, as the current information contained in it does not reflect current policy of AFI 36–2906, January 1998.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: MSgt Pamela Martin, HQ AFPC/DPSFM, 550 C Street West, Suite 37, Randolph Air Force Base, Texas, 78148–4737, 210–565–3415.

List of Subjects in 32 CFR Part 818

Alimony, Child support, Claims, Credit, Military personnel.

PART 818—[REMOVED]

Accordingly, and under the authority of 10 U.S. C. 8013, 15 U.S.C. 1073, 42 U.S.C. 659, 660, 665, 32 CFR, Chapter VII is amended by removing Part 818.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–32949 Filed 12–26–00; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AI67

New Criteria for Approving Courses for VA Educational Assistance Programs

AGENCIES: Department of Defense, Department of Transportation (Coast Guard), and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) educational assistance and educational benefit regulations by adding new criteria for VA to use in approving enrollments in courses under the educational programs VA administers. These changes implement provisions of the Veterans' Benefits Improvements Act of 1996 and the Veterans' Benefits Act of 1997. This document also amends the regulations to conform to statutory provisions and makes changes for the purpose of clarification.

DATES: *Effective Date:* This final rule is effective December 27, 2000.

Applicability Date: October 9, 1996.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Assistant Director for Policy and Program Development, Education Service (225), Veterans Benefits Administration, 202–273–7187.

SUPPLEMENTARY INFORMATION: On February 2, 2000, VA published a proposed rule in the **Federal Register** (65 FR 4914) to amend the VA educational assistance and educational benefit regulations in 38 CFR part 21, subparts D, K, and L to conform with provisions of the Veterans' Benefits Improvement Act of 1996 (Pub. L. 104–275) and with section 401(e) of the Veterans' Benefits Act of 1997 (Pub. L. 105–114).

Interested persons were given 60 days to submit comments. We received three comments: One from a veterans service organization, one from an educational institution, and one from an association of educational institutions. The service organization indicated that it had no comments.

The educational institution wrote that the provisions of 38 CFR 21.4251, as currently written, concerning (a) courses that were similar in character to other courses and (b) courses offered at additional facilities, should be added to the proposed rule.

The regulations previously provided that VA could approve the enrollment of a veteran or eligible person in a course offered by a school other than a job-training establishment only if the course had been in operation for 2 years or more immediately prior to the date of enrollment of the person. There were two exceptions to this rule which are the subject of the comment. The first exempted courses similar in character to instruction previously offered by the school for more than 2 years. (38 CFR 21.4251(a)(2)). The second exempted courses at additional facilities acquired by a school in the same general locality because of space limitations, since those were not considered to be courses at a subsidiary branch or extension, otherwise required to be offered for 2 years. (38 CFR 21.4251(f)(3)).

The "similar in character" requirement was derived from 38 U.S.C. 3689, which was specifically rescinded by Congress in the enactment of Pub. L. 104–275. The proposed rule is based on 38 U.S.C. 3680A(e), as added by Pub. L. 104–275, which bars approval of enrollment in courses not leading to a standard college degree offered by propriety schools that have operated on site for less than two years. Under the amended statute it does not matter how long the courses themselves have been offered at that site or whether they are similar in character to courses formerly offered at other sites. Rather, VA need only verify that the educational institution has been in operation at the site for two years. Therefore, we believe that adopting the commenter's suggestion to include the "similar in character" exemption of the old rule is unnecessary.

Similarly, we find no support in law for the old rule exempting courses at additional facilities created as a result of space limitations, because, as amended by Pub. L. 104–275, the law now requires that enrollment in all courses not leading to a standard college degree offered at a branch of a proprietary educational institution must be disapproved if the branch has been operating for less than two years. (38 U.S.C. 3680A(e)(2)).

The association of educational institutions objected that the definition of "change of ownership" in 38 CFR 21.4251(f)(2) was too vague. Specifically, the association stated that the language "Transactions that may cause a change of ownership include, but are not limited to the following * * *" made it difficult for institutions to decide if a change of ownership has taken place. The association suggested that we consider a change of ownership as having taken place when the Department of Education believes this occurred.

After careful consideration, we have decided not to adopt this suggestion. Under the previous rule, VA made the final decision whether changes in ownership had taken place. Thus, we believe VA has sufficient experience in making change-in-ownership decisions. Moreover, we expect that changes in ownership not specifically included in the definition would be extremely rare and approval would be barred only if the facts clearly show a change in ownership did occur.

The association of educational institutions also questioned the final-rule requirement in 38 CFR 21.4251(g) that an educational institution use substantially the same instructional methods and offer courses leading to the same educational objectives following a change of ownership or following a

move outside its general locality. Among the requirements of 38 U.S.C. 3680A(e) is a requirement that VA cannot approve an enrollment for VA training in a course not leading to a standard college degree offered by a proprietary educational institution if the institution offering the course completely moves outside its original general locality or has changed ownership and does not retain substantially the same courses as before the change in ownership or move, unless the institution has operated for two years following the change in ownership or move. The association of educational institutions suggested that it would be better policy to permit the use of different instructional methods and the teaching of additional courses if the institution's accrediting body so permits.

We believe that 38 U.S.C. 3680A(e), which establishes the applicable policy as a matter of law, may not be interpreted to permit adoption of this suggestion. We do not believe that courses could be "substantially the same" if they used different instructional methods or had different educational objectives.

Based on the rationale stated in this document and the proposed rule, we are adopting the provisions of the proposed rule as a final rule with one nonsubstantive change.

The Department of Defense (DOD), the Department of Transportation (Coast Guard), and VA are jointly issuing this final rule insofar as it relates to the Montgomery GI Bill—Selected Reserve. This program is funded by DOD and the Coast Guard, and is administered by VA. The remainder of this final rule is issued solely by VA.

The Secretary of Defense, Commandant of the Coast Guard, and the Secretary of Veterans Affairs hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will not cause educational institutions to make changes in their activities and would have minuscule monetary effects, if any. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance numbers for the programs affected by this proposed rule are 64.117, 64.120, and 64.124. This proposed rule will affect the Montgomery GI Bill—Selected Reserve which has no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Educational institutions, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: October 10, 2000.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

Approved: October 20, 2000.

Col. Curtis B. Taylor,

U.S. Army, Principal Director, (Military Personnel Policy) Department of Defense.

Approved: December 12, 2000.

F.L. Ames,

Assistant Commandant for Human Resources.

For the reasons set forth in the preamble, 38 CFR part 21 (subparts D, K, and L) is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Assistance Programs

1. The authority for part 21, subpart D continues to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.

2. In § 21.4200, paragraph (z) is added to read as follows:

§ 21.4200 Definitions.

* * * * *

(z) *Proprietary educational institution.* The term *proprietary educational institution* (including a proprietary profit or proprietary nonprofit educational institution) means an educational institution that:

(1) Is not a public educational institution;

(2) Is in a State; and

(3) Is legally authorized to offer a program of education in the State where the educational institution is physically located.

(Authority: 38 U.S.C. 3680A(e))

3. Section 21.4251 is revised to read as follows:

§ 21.4251 Minimum period of operation requirement for educational institutions.

(a) *Definitions.* The following definitions apply to the terms used in this section. The definitions in § 21.4200 apply to the extent that no definition is included in this paragraph.

(1) *Control.* The term *control* (including the term controlling) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(2) *Person.* The term *person* means an individual, corporation, partnership, or other legal entity.

(Authority: 38 U.S.C. 3680A(e))

(b) *Some educational institutions must be in operation for 2 years.* Except as provided in paragraph (c) of this section, when a proprietary educational institution offers a course not leading to a standard college degree, VA may not approve an enrollment in that course if the proprietary educational institution—

(1) Has been operating for less than 2 years;

(2) Offers the course at a branch or extension and the branch or extension has been operating for less than 2 years; or

(3) Offers the course following either a change in ownership or a complete move outside its original general locality, and the educational institution does not retain substantially the same faculty, student body, and courses as before the change in ownership or the move outside the general locality unless the educational institution, after such change or move, has been in operation for at least 2 years.

(Authority: 38 U.S.C. 3680A(e) and (g))

(c) *Exception to the 2-year operation requirement.* Notwithstanding the provisions of paragraph (b) of this section, VA may approve the enrollment of a veteran, servicemember, reservist, or eligible person in a course not leading to a standard college degree approved under this subpart if it is offered by a proprietary educational institution that—

(1) Offers the course under a contract with the Department of Defense or the Department of Transportation; and

(2) Gives the course on or immediately adjacent to a military base, Coast Guard station, National Guard facility, or facility of the Selected Reserve.

(Authority: 38 U.S.C. 3680A(e) and (g))

(d) *Operation for 2 years.* VA will consider, for the purposes of paragraph (b) of this section, that a proprietary

educational institution (or a branch or extension of such an educational institution) will be deemed to have been operating for 2 years when the educational institution (or a branch or extension of such an educational institution)—

(1) Has been operating as an educational institution for 24 continuous months pursuant to the laws of the State(s) in which it is approved to operate and in which it is offering the training; and

(2) Has offered courses continuously for at least 24 months inclusive of normal vacation or holiday periods, or periods when the institution is closed temporarily due to a natural disaster that directly affected the institution or the institution's students.

(Authority: 38 U.S.C. 3680A(e) and (g))

(e) *Move outside the same general locality.* A proprietary educational institution (or a branch or extension thereof) will be deemed to have moved to a location outside the same general locality of the original location when the new location is beyond normal commuting distance of the original location, i.e., 55 miles or more from the original location.

(Authority: 38 U.S.C. 3680A(e))

(f) *Change of ownership.* (1) A change of ownership of a proprietary educational institution occurs when—

(i) A person acquires operational management and/or control of the proprietary educational institution and its educational activities; or

(ii) A person ceases to have operational management and/or control of the proprietary educational institution and its educational activities.

(2) Transactions that may cause a change of ownership include, but are not limited to the following:

(i) The sale of the educational institution;

(ii) The transfer of the controlling interest of stock of the educational institution or its parent corporation;

(iii) The merger of 2 or more educational institutions; and

(iv) The division of one educational institution into 2 or more educational institutions.

(3) VA considers that a change in ownership of an educational institution does not include a transfer of ownership or control of the institution, upon the retirement or death of the owner, to:

(i) The owner's parent, sibling, spouse, child, spouse's parent or sibling, or sibling's or child's spouse; or

(ii) An individual with an ownership interest in the institution who has been involved in management of the institution for at least 2 years preceding the transfer.

(Authority: 38 U.S.C. 3680A(e))

(g) *Substantially the same faculty, student body, and courses.* VA will determine whether a proprietary educational institution has substantially the same faculty, student body, and courses following a change of ownership or move outside the same general locality by applying the provisions of this paragraph.

(1) VA will consider that the faculty remains substantially the same in an educational institution when faculty members who teach a majority of the courses after the move or change in ownership, were so employed by the educational institution before the move or change in ownership.

(2) VA will consider that the courses remain substantially the same at an educational institution when:

(i) Faculty use the same instructional methods during the term, quarter, or semester after the move or change in ownership as were used before the move or change in ownership; and

(ii) The courses offered after the move or change in ownership lead to the same educational objectives as did the courses offered before the move or change in ownership.

(3) VA considers that the student body remains substantially the same at an educational institution when, except for those students who have graduated, all, or a majority of the students enrolled in the educational institution on the last day of classes before the move or change in ownership are also enrolled in the educational institution after the move or change in ownership.

(Authority: 38 U.S.C. 3680A(e) and (f)(1))

4. In § 21.4252, paragraph (m) is added to read as follows:

§ 21.4252 Courses precluded.

* * * * *

(m) *Courses offered under contract.* VA may not approve the enrollment of a veteran, servicemember, reservist, or eligible person in a course as a part of a program of education offered by any educational institution if the educational institution or entity providing the course under contract has not obtained a separate approval for the course in the same manner as for any other course as required by §§ 21.4253, 21.4254, 21.4256, 21.4257, 21.4260, 21.4261, 21.4263, 21.4264, 21.4265, 21.4266, or 21.4267, as appropriate.

(Authority: 38 U.S.C. 3680A(f) and (g))

5. In § 21.4253, paragraphs (d)(6), (d)(7), and (d)(8) are added to read as follows:

§ 21.4253 Accredited courses.

* * * * *

(d) * * *

(6) The accredited courses, the curriculum of which they form a part, and the instruction connected with those courses are consistent in quality, content, and length with similar courses in public educational institutions and other private educational institutions in the State with recognized accepted standards.

(7) There is in the educational institution offering the course adequate space, equipment, instructional material, and instructor personnel to provide training of good quality.

(8) The educational and experience qualifications of directors, and administrators of the educational institution offering the courses, and instructors teaching the courses for which approval is sought, are adequate.

(Authority: 38 U.S.C. 3675(b), 3676(c)(1), (2), (3))

* * * * *

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

6. The authority for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

7. Section 21.7122 is amended by:

a. In paragraph (e)(6), removing "school, or" and adding, in its place, "school;".

b. In paragraph (e)(7), removing "course." and adding, in its place, "course; or".

c. Revising paragraphs (e)(1) through (e)(5), and the authority citation for paragraph (e).

d. In paragraph (e)(6), removing from the end of the paragraph ", or" and adding, in its place, ";".

e. In paragraph (e)(7), removing the period at the end of the paragraph and adding, in its place, "; or".

f. Adding paragraph (e)(8).

The addition and revisions read as follows:

§ 21.7122 Courses precluded.

* * * * *

(e) *Other courses.* VA shall not pay educational assistance for—

(1) An enrollment in an audited course (see § 21.4252(i));

(2) An enrollment in a course for which the veteran or servicemember received a nonpunitive grade in the absence of mitigating circumstances (see § 21.4252(j));

(3) New enrollments in a course where approval has been suspended by a State approving agency;

(4) An enrollment in certain courses being pursued by nonmatriculated students as provided in § 21.4252(l);

(5) Except as provided in § 21.4252(j), an enrollment in a course from which the veteran or servicemember withdrew without mitigating circumstances;

* * * * *

(8) An enrollment in a course offered under contract for which VA approval is prohibited by § 21.4252(m).

(Authority: 38 U.S.C. 3002(3), 3034, 3672(a), 3676, 3680(a), 3680A(a), 3680A(f), 3680A(g))

Subpart L—Educational Assistance for Members of the Selected Reserve

8. The authority for part 21, subpart L continues to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501, unless otherwise noted.

9. Section 21.7622 is amended by:

a. In paragraph (f)(4)(v), removing "or".

b. In paragraph (f)(4)(vi), removing "course." and adding, in its place, "course; or".

c. Adding a new paragraph (f)(4)(vii).

d. Revising the authority citation for paragraph (f).

The addition and revision read as follows:

§ 21.7622 Courses precluded.

* * * * *

(f) * * *

(4) * * *

(vii) An enrollment in a course offered under contract for which VA approval is prohibited by § 21.4252(m).

(Authority: 10 U.S.C. 16131(c), 16136(b); 38 U.S.C. 3672(a), 3676, 3680(a), 3680A(f), 3680A(g); § 642, Public Law 101–189, 103 Stat. 1458)

[FR Doc. 00–32810 Filed 12–26–00; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R1–7218a; A–1–FRL–6894–6]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut, Massachusetts and Rhode Island; Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving and promulgating State Implementation Plan (SIP) revisions submitted by the States of Connecticut, Massachusetts and Rhode Island. The SIP revisions for each of these states establishes a nitrogen oxides budget and trading program in response to EPA's regulation "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the " NO_X SIP Call." The SIP revision for each of the States includes a narrative description and regulation establishing a statewide NO_X budget and NO_X allowance trading program for large electricity generating and industrial sources beginning in the year 2003. The Massachusetts SIP also included revisions to existing regulations to assure consistency with the NO_X budget and allowance trading program.

The intended effect of these actions is to approve these SIP strengthening measures for the Connecticut, Massachusetts and Rhode Island ozone SIP's. This action is being taken in accordance with section 110 of the Clean Air Act (CAA). Further, we determined that the submittal from each of these three states meets the air quality objective of the NO_X SIP call requirements and we will take action in a future rulemaking on whether these submittals meet all the applicable NO_X SIP call requirements.

DATES: This rule is effective on January 26, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA-New England, One Congress Street, 11th floor, Boston, MA. Copies of the documents specific to the SIP approval for CT are available at the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630. Copies of the documents specific to the SIP approval for Massachusetts are available at the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108. Copies of the documents specific to the SIP approval for Rhode Island are available at the Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908–5767.

FOR FURTHER INFORMATION CONTACT: Dan Brown at (617) 918–1532 or via E-mail at brown.dan@epa.gov.

SUPPLEMENTARY INFORMATION: We published a Notice of Proposed Rulemaking (NPR) for the State of Connecticut, Massachusetts and Rhode Island in the **Federal Register** on July 12, 2000 (at 65 FR 42900, 65 FR 42907, and 65 FR 42913 for CT, MA and RI, respectively). The NPR proposed approval and promulgation of each States SIP revision for a Nitrogen Oxides Budget and Allowance Trading Program.

The formal SIP revision was submitted by Connecticut in September 1999 and included CT's NO_X control regulation, section 22a–174–22b, "Post-2002 Nitrogen Oxides (NO_X) Budget Program," and the CT's SIP narrative, "Connecticut State Implementation Plan Revision to Implement the NO_X SIP Call," September 1999. The formal SIP revision was submitted by Massachusetts in November 1999 and included MA's NO_X control regulation, 310 CMR 7.28, " NO_X Allowance Trading Program," and the SIP narrative materials: "Background Document and Technical Support for Public Hearings on the Proposed Revisions to State Implementation Plan for Ozone," July 1999; "Supplemental Background Document for Public Hearings on Modification to the July 1999 Proposal to Revise the State Implementation Plan for Ozone, including Proposed 310 CMR 7.28." Massachusetts' submittal also included amendments to 310 CMR 7.19, "Reasonably Available Control Technology (RACT) for sources of Oxides of Nitrogen (NO_X)," and 310 CMR 7.27, " NO_X Allowance Program," which allowed for consistent requirements and a smooth transition to the program under 310 CMR 7.28 in 2003. The formal SIP revision was submitted by Rhode Island in October 1999 and included RI's NO_X control regulation, Regulation No. 41, "Nitrogen Oxides Allowance Program," and the SIP narrative materials, " NO_X State Implementation Plan (SIP) Call Narrative."

Connecticut, Massachusetts and Rhode Island submitted these SIP revisions in order to strengthen their one-hour ozone SIP and to comply with the NO_X SIP call. The NO_X SIP call originally required 23 jurisdictions, including CT, MA and RI, to meet statewide NO_X emission budgets during each ozone season, i.e., May 1 to October 1 beginning in 2003. Implementation of the NO_X SIP call will reduce the amount of ground level ozone that is transported across the eastern United States. The NO_X SIP Call originally set out a schedule that required the affected states to adopt

regulations by September 30, 1999,[1] and implement control strategies by May 1, 2003.[2]

To assist the states in their efforts to meet the SIP Call, the NO_X SIP Call final rulemaking included a model NO_X allowance trading regulation, called "NO_X Budget Trading Program for State Implementation Plans," (40 CFR Part 96), that could be used by states to develop their regulations. The NO_X SIP Call notice explained that if states developed an allowance trading regulation consistent with the EPA model rule, they could participate in a regional allowance trading program that would be administered by the EPA. See 63 FR 57458–57459. An allowance trading program, commonly referred to as a "cap and trade" program, is a market-based program that uses market forces to reduce the overall cost of compliance for pollution sources, such as power plants, while maintaining emission reductions and environmental benefits. The NO_X SIP call and model NO_X allowance trading regulation is further explained in the NPR and will not be restated here. The October 27, 1998 **Federal Register** notice contains a full description of the EPA's model NO_X budget trading program. See 63 FR 57514–57538 and 40 CFR Part 96.

A. Why Are We Fully Approving the CT, MA and RI SIP Revisions?

We evaluated the CT, MA and RI NO_X SIP Call submittals using EPA's "NO_X SIP Call Checklist," (the checklist), issued on April 9, 1999. The checklist reflects and follows the requirements of the NO_X SIP Call set forth in 40 CFR 51.121 and 51.122 and outlines the criteria that we used to determine the completeness and approvability of these SIP submittals. As noted in the checklist, the key elements of an approvable SIP submittal under the NO_X SIP Call are: a budget demonstration; enforceable measures for control; legal authority to implement and enforce the control measures; compliance dates and schedules; monitoring, recordkeeping, and emissions reporting; as well as elements that apply to states that choose to adopt an emissions trading rule in response to the NO_X SIP Call. In addition to the SIP checklist, we used the October 1998 final NO_X SIP Call rulemaking notice and subsequent technical amendments to the NO_X SIP Call, published May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222), to evaluate the approvability of the CT, MA and RI SIP submittals. We also used section 110 of the CAA, Implementation Plans, to evaluate the approvability of the submittals as a revision to the SIP for each of the three states.

The NPR provides a full description of each states SIP revision. Briefly, the Connecticut SIP submittal included the following:

- Adopted control regulations which require emission reductions beginning in 2003, i.e., section 22a–174–22b, "Post-2002 Nitrogen Oxides (NO_X) Budget Program;'
- A description of how the state intends to use the compliance supplemental pool, i.e., as part of the control regulations;
- A baseline inventory of NO_X mass emissions from EGU's, non-EGU's, area, highway and non-road mobile sources in the year 2007 as published in the May 14, 1999, technical amendments to the NO_X SIP Call, i.e., as part of the SIP narrative;
- A 2007 projected inventory (budget) reflecting NO_X reductions achieved by the state control measures contained in the submittal, i.e., as part of the SIP narrative; and
- A commitment to meet the annual, triennial, and 2007 reporting requirements, i.e., as part of the SIP narrative.

The Massachusetts SIP submittal included the following:

- Adopted control regulations which require emission reductions beginning in 2003, i.e., 310 CMR 7.28;
- A description of how the state intends to use the compliance supplement pool, i.e., as part of the control regulation;
- A baseline inventory of NO_X mass emissions from EGUs, non-EGUs, area, highway and non-road mobile sources in the year 2007 as published in the May 14, 1999, technical amendments to the NO_X SIP Call, i.e., as part of the SIP narrative;
- A 2007 projected inventory (budget) reflecting NO_X reductions achieved by the state control measures contained in the submittal, i.e., as part of the SIP narrative; and
- A commitment to meet the annual, triennial, and 2007 reporting requirements, i.e., as part of the SIP narrative.
- Revisions to 310 CMR 7.19, "Reasonably Available Control Technology (RACT) for sources of Oxides of Nitrogen (NO_X)," and 310 CMR 7.27, " NO_X Allowance Program."

And the Rhode Island SIP submittal included the following:

- Adopted control regulations which require emission reductions beginning in 2003, i.e., Regulation No. 41;
- A description of how the state intends to use the compliance supplement pool, i.e., as part of the control regulation;
- A baseline inventory of NO_X mass emissions from EGUs, non-EGUs, area, highway and non-road mobile sources in the year 2007 as published in the May 14, 1999, technical amendments to the NO_X SIP Call, i.e., as part of the SIP narrative;
- A 2007 projected inventory (budget) reflecting NO_X reductions achieved by the state control measures contained in the submittal, i.e., as part of the SIP narrative; and
- A commitment to meet the annual, triennial, and 2007 reporting requirements, i.e., as part of the SIP narrative.

We evaluated these SIP submittals and found them to be fully approvable. For each of these three states the respective submittals will strengthen the SIPs for reducing ground level ozone by providing NO_X reductions beginning in 2003. The submittals also meet the air quality objectives of the NO_X SIP Call. The submittals contained the information necessary to demonstrate that CT, MA and RI have the legal authority to implement and enforce the control measures, as well as a description of how each of these states intends to use the compliance supplement pool. Furthermore, the submittals demonstrate that the compliance dates and schedules, and the monitoring, record keeping and emission reporting requirements will be met.

In the July 12, 2000 NPR we requested comments on our proposed rulemaking to fully approve the SIP submittals for each of these three states (at 65 FR 42900, 65 FR 42907, and 65 FR 42913 for CT, MA and RI, respectively). The specific requirements of the SIP revisions and the rationale for our action is fully explained in the NPR and will not be restated here. The comment period for the proposed rulemakings ended on August 11, 2000. We did not received any comments on our proposed rulemaking and evaluation of the SIP

[1] On May 25, 1999, the D.C. Circuit issued a partial stay of the submission of the SIP revisions required under the NO_X SIP Call. State Petitioners challenging the NO_X SIP Call moved to stay the submission schedule until April 27, 2000. The D.C. Circuit issued a stay of the SIP submission deadline pending further order of the court. Michigan v. EPA, No. 98–1497 (D.C. Cir. May 25, 1999) (order granting stay in part). On March 3, 2000, the D.C. Circuit ruled on Michigan v. EPA, affirming many aspects of the SIP call and remanding certain other portions to the Agency. The court's ruling does not affect this action because Connecticut, Massachusetts and Rhode Island voluntarily submitted their respective SIP revision to EPA for approval notwithstanding the court's stay of the SIP submission deadline.

[2] On August 30, 2000, the D.C. Circuit issued a court order extending the compliance deadline under the NO_X SIP call to May 2004.

submittals and we are fully approving the CT, MA and RI SIP submittals with this final rulemaking.

B. Why Are We Considering the NO_X SIP Call Submittals From CT, MA, and RI at the Same Time?

In February 1999, CT, MA, RI, and EPA signed a memorandum of understanding (i.e., "the Three State MOU") agreeing to redistribute the EGU portions of the three states' budgets, as well as the compliance supplement pool allocations, amongst themselves. Therefore, it is necessary to consider the adopted 2007 emission budgets and adopted NO_X reducing measures in CT, MA and RI together to approve any individual state SIP submittal as meeting the air quality objectives of the NO_X SIP Call.

Under the Three State MOU, the combined 2007 controlled emission level and compliance supplement pool did not change for the three states, only the individual state EGU allocations and supplement pools were redistributed to provide additional flexibility among these three states. EPA supports this concept because such a redistribution is no different than the effects of trading. For a detailed discussion of why EPA supports the concept that states can collectively redistribute their NO_X SIP Call budgets, see the proposed Three State MOU notice, 64 FR 49989, September 15, 1999.

As described in the NPR, comparing the most recent technical amendments to the NO_X SIP Call budgets to the adopted and submitted NO_X SIP Call related measures from CT, MA and RI, the adopted measures in the three states will reduce more NO_X from the EGU and non-EGU sectors than the NO_X SIP Call notices have required. Given the fact that together the three states' regulations achieve at least the same NO_X reduction and allocate fewer than required compliance supplement pool allocations, EPA finds that the NO_X SIP Call SIP submittals from the three states collectively meet the air quality objectives of the NO_X SIP Call as published to date.

C. What Is the Remaining Issue Associated With the CT, MA and RI NO_X SIP Call Submittals?

The March 2, 2000 technical corrections to the NO_X SIP call changed the 2007 baselines and budgets for the highway and non-EGU sub-inventories in CT, MA, and RI after the three states had submitted their NO_X SIP call budgets. Furthermore, on March 3, 2000, the D.C. Circuit ruled on Michigan v. EPA, affirming many aspects of the NO_X SIP Call and remanding certain other portions to the Agency (e.g., the definition of an EGU and the control assumptions for internal combustion engines). The portion of the SIP Call upheld by the Court is being referred to as Phase I of the NO_X SIP call. The Phase I submissions cover all of the NO_X SIP Call requirements except for a small part of the EGU portion and the large internal combustion engine portion of the budget. The second phase of the NO_X SIP call will address the aspects of the NO_X SIP call the court remanded to the Agency. Any additional emission reductions required as a result of a final Phase II portion of the statewide emissions budget is expected to be a relatively small supplement to the SIPs (e.g., representing less than 10 percent of total reductions required by the SIP Call). The Phase II budgets are expected to be proposed in the near future.

For Connecticut, Massachusetts and Rhode Island, the Phase I baseline and budget emissions are based on the March 2, 2000 baseline and budget emissions and we do not anticipate a significant change with the forthcoming Phase II emission budgets for these three states. However, the baseline and budget NO_X emissions submitted by Connecticut, Massachusetts and Rhode Island were based on the May 14, 1999 emission baseline and budget which was the most up-to-date budget at the time of the State's submittals. Therefore, the SIP baseline and budget emissions are not consistent with the revised March 2, 2000 NO_X budgets allocated for these three states. However, the total emission reductions (i.e., the difference between the emission baseline and budget) from implementing the CT, MA and RI SIPs are greater than the emission reduction required in Phase I. Nevertheless, because of the inconsistency in the NO_X budgets for these three states, we could not fully approve the SIP revisions as meeting the NO_X SIP call, rather, we are fully approving the SIP revisions as SIP strengthening measures which meet the air quality objectives of the NO_X SIP call. Connecticut, Massachusetts and Rhode Island will need to submit a revision to their emission baseline and budgets making them consistent with the Phase I emission baseline and budget numbers for the submittals to be fully approvable as meeting Phase I of the NO_X SIP call. In addition, CT, MA and RI may be further required to revise its NO_X SIP Call program due to potential forthcoming changes to the Phase II NO_X SIP Call budget requirements. At such time as EPA publishes new Phase II emission budget requirements, CT, MA and RI will be informed as to what, if any, changes are needed to assure their respective NO_X budgets are consistent with the final NO_X SIP call budgets.

Final Action

We are fully approving the revisions to the Connecticut, Massachusetts and Rhode Island SIP's as strengthening measures for the three states one-hour ground level ozone SIP's. Specifically we are approving Connecticut's regulation 22a–174–22b and supporting material; Massachusetts' regulation 310 CMR 7.28, amendments to 310 CMR 7.19 and 7.27, and supporting material; and Rhode Islands regulation 41 and supporting material. We have determined the SIP revisions for these three states meet the air quality objectives of the NO_X SIP call requirements EPA has published to date. This rulemaking is effective on January 26, 2001. After EPA recalculates the final 2007 emission budget and CT, MA and RI make any necessary revisions to assure their respective 2007 emission budgets are consistent with the EPA's final budget, we will take action in a separate notice on whether the SIP submittals meet the applicable NO_X SIP call requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

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

communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 26, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: October 20, 2000.

Mindy S. Lubber,

Regional Administrator, EPA-New England.

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

PART 52—[AMENDED]

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

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

Subpart H—Connecticut

2. Section 52.370 is amended by adding paragraph (c)(86) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(86) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on September 30, 1999.

(i) Incorporation by reference.

(A) Regulations of Connecticut State Agencies, Section 22a–174–22b, State of Connecticut Regulation of Department of Environmental Protection Concerning The Post-2002 Nitrogen Oxides (NO_X) Budget Program, which became effective on September 29, 1999.

(ii) Additional materials.

(A) Letter from Connecticut Department of Environmental Protection dated September 30, 1999 submitting Regulations of Connecticut State Agencies, Section 22a–174–22b and associated administrative materials as a revision to the Connecticut State Implementation Plan.

(B) The SIP narrative "Connecticut State Implementation Plan Revision to Implement the NO_X SIP Call," dated September 30, 1999.

3. In § 52.385 the Table 52.385 is amended by adding an entry in numerical order for "22a–174–22b" to read as follows:

§ 52.385 EPA—approved Connecticut regulations.

* * * * *

TABLE 52.385—EPA-APPROVED REGULATIONS

Connecticut State citation	Title/subject	Dates		Federal Register citation	52.370	Comments/ description
		Date adopted by State	Date approved by EPA			
*	*	*	*	*	*	*
22a–174–22b	Post-2002 Nitrogen Oxides (NO_X) Budget Program.	9/29/1999	12/27/2000	65 FR 81746	(c)86	
*	*	*	*	*	*	*

Subpart W—Massachusetts

4. Section 52.1120 is amended by adding paragraph (c)(124) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(124) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on November 19, 1999.

(i) Incorporation by reference.

(A) Amendments revising regulatory language in 310 CMR 7.19(13)(b), Continuous Emission Monitoring Systems, which became effective on December 10, 1999.

(B) Amendments to 310 CMR 7.27, NO_X Allowance Program, adding paragraphs 7.27(6)(m), 7.27(9)(b), 7.27(11)(o), 7.27(11)(p) and 7.27(15)(e), which became effective December 10, 1999.

(C) Regulations 310 CMR 7.28, NO_X Allowance Trading Program, which became effective on December 10, 1999.

(ii) Additional materials.

(A) Letter from the Commonwealth of Massachusetts, Executive Office of Environmental Affairs, Department of Environmental Protection dated November 19, 1999, submitting amendment to SIP.

(B) Background Document and Technical Support for Public Hearings on the Proposed Revisions to the State Implementation Plan for Ozone, July, 1999.

(C) Supplemental Background Document and Technical Support for Public Hearings on Modifications to the July 1999 Proposal to Revise the State Implementation Plan for Ozone, September, 1999.

(D) Table of Unit Allocations.

5. In § 52.1167 the Table 52.1167 is amended by:

a. Adding new entries in numerical order for "310 CMR 7.19(13)(b)" and "310 CMR 7.28," and

b. Adding a new entry "310 CMR 7.27" under existing "310 CMR 7.27."

The additions read as follows:

§ 52.1167 EPA—approved Massachusetts State regulations

* * * * *

TABLE 52.1167—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
*	*	*	*	*	*	*
310 CMR 7.19(13)(b).	Continuous Emissions Monitoring Systems.	November 19, 1999	12/27/2000	65 FR 81747	124	revisions to regulatory language.
*	*	*	*	*	*	*
		November 19, 1999	12/27/2000	65 FR 81747	124	adding paragraphs 7.27(6)(m), 7.27(9)(b), 7.27(11)(o), 7.27(11)(p) and 7.27(15)(e).
*	*	*	*	*	*	*
310 CMR 7.28	NO_X Allowance Trading Program.	January 7, 2000	12/27/2000	65 FR 81747	124	
*	*	*	*	*	*	*

Subpart OO—Rhode Island

6. Section 52.2070 is amended by:

a. Adding in numerical order a new entry for "Air Pollution Control Regulation 41" to the table in paragraph (c).

b. Adding in State submittal date order new entries for "October 1, 1999 letter from Rhode Island Department of Environmental Management", "NO_X State Implementation Plan (SIP) Call Narrative" and "November 19, 1999, letter from Rhode Island Department of Environmental Management" to the table in paragraph (e).

§ 52.2070 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED RHODE ISLAND REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
* *	*	*	*	*
Air Pollution Control Regulation No. 41	NO_X Budget Trading Program	October 1, 1999	12/27/2000 65 FR 81748	
* *	*	*	*	*

* * * * *

(e) * * *

RHODE ISLAND NON REGULATORY

Name of Non Regulatory SIP Provision	Applicable Geographic or Nonattainment area	State Submittal Date/ Effective Date	EPA Approved Date	Explanations
* *	*	*	*	* *
October 1, 1999, letter from Rhode Island Department of Environmental Management.	Statewide	Submitted October 1, 1999.	12/27/2000 65 FR 81748	Submitting Air Pollution Control Regulation No. 14, "NO_X Budget Trading Program," and the "NO_X State Implementation Plan (SIP) Call Narrative."
"NO_X State Implementation Plan (SIP) Call Narrative," September 22, 1999.	Statewide	Submitted October 1, 1999.	12/27/2000 65 FR 81748	
November 9, 1999, letter from Rhode Island Department of Environmental Management.	Statewide	Submitted November 9, 1999.	12/27/2000 65 FR 81748	Stating RI's intent to comply with applicable reporting requirements.
* *	*	*	*	* *

[FR Doc. 00–32845 Filed 12–26–00; 8:45 am]
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FEDERAL MARITIME COMMISSION

46 CFR Parts 501, 502

[Docket No. 00–13]

Agency Reorganization and Delegations of Authority

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission ("FMC") is revising its rules to reflect the reorganization of the agency which took effect February 27, 2000, and to delegate authority to certain FMC bureaus.

DATES: Effective December 27, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol St., NW., Washington, DC 20573–0001, (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission ("FMC") is revising parts 501 and 502 of its rules to reflect the reorganization of the agency which took effect February 27, 2000. The FMC was reorganized in order to more efficiently discharge its duties in light of passage of the Ocean Shipping Reform Act of 1998 ("OSRA"), Pub. L. 105–258, 112 Stat. 1902, which amended the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.*

Each applicable section in part 501 is revised to reflect the creation of the Permanent Task Force on International Affairs; to reflect the relocation of the Office of Informal Inquiries, Complaints, and Dockets from the Office of the Secretary to the Office of Consumer Complaints in the Bureau of Consumer Complaints and Licensing; to reflect the elimination of the Bureau of Economics and Agreement Analysis and the Bureau of Tariffs, Certifications and Licensing; and to reflect the creation of the Bureau of Trade Analysis and the Bureau of Consumer Complaints and Licensing. In addition, the Bureau of Administration is eliminated and its functions are subsumed under the Office of the Executive Director. As applicable, each section is also amended to reflect changes occasioned by passage of OSRA. Finally, references are eliminated to the Shipping Act, 1916, a statute over which the FMC no longer retains jurisdiction. The entire text of Part 501, including both revised sections and sections that have been retained but not revised because no changes were necessary, is set forth for ease of reading and comprehension.

Section 501.5 continues to describe the functions of the FMC's organizational components. In addition to reflecting the changes described above, the section describes in paragraphs (g) and (h) the functions of the newly created Bureaus of Trade Analysis and Consumer Complaints and Licensing. The Bureau of Trade Analysis consists of the Office of Agreements, Office of Economic and Competition Analysis, and Office of Service Contracts and Tariffs. The Bureau of Consumer Complaints and Licensing consists of the Office of Consumer Complaints, Office of Transportation Intermediaries, and Office of Passenger Vessels and Information Processing. The Deputy Bureau Director of the Bureau of Consumer Complaints and Licensing is designated as the agency's Dispute Resolution Specialist, pursuant to section 3 of the Administrative Dispute Resolution Act of 1996, Pub. L. 104–320. Paragraph (j) of the section is

revised by removing references to the Committee on Automated Data Processing and the Incentive Awards Committee, which no longer exist.

Subpart C of part 501 describes the delegations of authority within the FMC. Under Reorganization Plan No. 7 of 1961, the Commission may delegate any of its functions to other agency entities or employees. Changes as a result of the reorganization are reflected throughout the subpart.

Two new delegations are also incorporated in the revision. Section 501.26(i) of the existing rules grants the Director, Bureau of Trade Analysis the authority to determine that no action should be taken to prevent an agreement from becoming effective under section 6(c)(1) of the Shipping Act of 1984. However, § 501.26(i)(4) establishes that "new sailing agreements" are deemed to have the potential to result in a significant reduction in competition, and are therefore among the types of agreements (enumerated at § 501.26(i)) not within the above-described authority delegated to the Director, Bureau of Trade Analysis. In this rulemaking, the phrase "new sailing agreements" is removed from the list of agreements (renumbered as § 501.26(e)) deemed to have the potential to result in a significant reduction in competition. By removing "new sailing agreements" from this list, the Director, Bureau of Trade Analysis is thus delegated the authority to determine that no action should be taken to prevent a new sailing agreement from becoming effective.

In new § 501.27(c), the Director, Bureau of Consumer Complaints and Licensing is delegated the authority to approve amendments to escrow agreements for the purpose of changing names of principals, the vessels covered, the escrow agent or the amount of funds held in escrow.

Pursuant to OSRA, reference formerly found at § 501.27(i) to the authority to reject and return service contracts and essential terms publications is removed as it is no longer provided for by regulation.

A revised organization chart is included in appendix A to part 501.

Five sections of part 502 are amended. Sections 502.44 and 502.68, and Appendix A, are revised to delete references to the Shipping Act, 1916, over which the FMC no longer has jurisdiction. Revision of § 502.271 reflects the reorganization of the FMC by clarifying that Special Dockets Officers are now a part of the Office of Consumer Complaints, in the Bureau of Consumer Complaints and Licensing. Section 502.301 is revised to reflect the transfer of the informal procedure for adjudication of small claims to the Office of Consumer Complaints.

No period of notice and comment is required for this rulemaking as it concerns agency procedure and organization. As a result, no analysis need be completed under the Small Business Regulatory Enforcement Flexibility Act, 15 U.S.C. 601. This rule does not incorporate any new information collection requirements, and therefore does not require clearance under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

List of Subjects

46 CFR Part 501

Authority delegations, Organization and functions, Seals and insignia.

46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Federal Maritime Commission amends 46 CFR parts 501 and 502 as set forth below:

Revise part 501 to read as follows:

PART 501—THE FEDERAL MARITIME COMMISSION—GENERAL

Subpart A—Organization and Functions

Sec.

Subpart B—Official Seal

Subpart C—Delegation and Redelegation of Authorities

Subpart D—Public Requests for Information

Appendix A to Part 501—Federal Maritime Commission Organization Chart

Authority: 5 U.S.C. 551–557, 701–706, 2903 and 6304; 31 U.S.C. 3721; 41 U.S.C. 414 and 418; 44 U.S.C. 501–520 and 3501–3520; 46 U.S.C. app. 876, 1111, and 1701–1720; Reorganization Plan No. 7 of 1961, 26 FR 7315, August 12, 1961; Pub. L. 89–56, 79 Stat. 195; 5 CFR part 2638; Pub. L. 89–777, 80 Stat. 1356; Pub. L. 104—320, 110 Stat. 3870.

Subpart A—Organization and Functions

§ 501.1 Purpose.

This part describes the organization, functions and Official Seal of, and the delegation of authority within, the Federal Maritime Commission ("Commission").

§ 501.2 General.

(a) *Statutory functions.* The Commission regulates common carriers by water and other persons involved in the foreign commerce of the United States under provisions of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1701–1720); section 19 of the Merchant Marine Act, 1920 (46 U.S.C. app. 876); the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a); sections 2 and 3, Pub. L. 89–777, Financial Responsibility for Death or Injury to Passengers and for Non-Performance of Voyages (46 U.S.C. app. 817d and 817e); and other applicable statutes.

(b) *Establishment and composition of the Commission.* The Commission was established as an independent agency by Reorganization Plan No. 7 of 1961, effective August 12, 1961, and is composed of five Commissioners ("Commissioners" or "members"), appointed by the President, by and with the advice and consent of the Senate. Not more than three Commissioners may be appointed from the same political party. The President designates one of the Commissioners to be the Chairman of the Commission ("Chairman").

(c) *Terms and vacancies.* The term of each member of the Commission is 5 years and begins when the term of the predecessor of that member ends (*i.e.*, on June 30 of each successive year), except that, when the term of office of a member ends, the member may continue to serve until a successor is appointed and qualified. A vacancy in the office of any Commissioner shall be filled in the same manner as the original appointment, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he or she

succeeds. Each Commissioner shall be removable by the President for inefficiency, neglect of duty, or malfeasance in office.

(d) *Quorum.* A vacancy or vacancies in the Commission shall not impair the power of the Commission to execute its functions. The affirmative vote of a majority of the members of the Commission is required to dispose of any matter before the Commission. For purposes of holding a formal meeting for the transaction of the business of the Commission, the actual presence of two Commissioners shall be sufficient. Proxy votes of absent members shall be permitted.

(e) *Meetings; records; rules and regulations.* The Commission shall, through its Secretary, keep a true record of all its meetings and the yea-and-nay votes taken therein on every action and order approved or disapproved by the Commission. In addition to or in aid of its functions, the Commission adopts rules and regulations in regard to its powers, duties and functions under the shipping statutes it administers.

§ 501.3 Organizational components of the Federal Maritime Commission.

The major organizational components of the Commission are set forth in the Organization Chart attached as Appendix A to this part. An outline table of the components/functions follows:

(a) Office of the Chairman of the Federal Maritime Commission. (Chief Executive and Administrative Officer; FOIA and Privacy Act Appeals Officer.)

(1) Information Security Officer.

(2) Designated Agency Ethics Official.

(b) Offices of the Members of the Federal Maritime Commission.

(c) Office of the Secretary. (FOIA and Privacy Act Officer; Federal Register Liaison.)

(d) Office of the General Counsel. (Ethics Official; Chair, Permanent Task Force on International Affairs.)

(e) Office of Administrative Law Judges.

(f) Office of Equal Employment Opportunity.

(g) Office of the Inspector General.

(h) Office of the Executive Director. (Chief Operating Officer; Designated Senior IRM Official; Senior Procurement Executive; Audit Followup and Management Controls; Chief Information Officer; Chief Financial Officer.)

(1) Office of Information Resources Management. (Senior IRM Manager; Computer Security; Forms Control; Records Management.)

(2) Office of Budget and Financial Management.

(3) Office of Human Resources.

(4) Office of Management Services (Physical Security; FMC Contracting Officer).

(i) Bureau of Consumer Complaints and Licensing (Dispute Resolution Specialist).

(1) Office of Consumer Complaints.

(2) Office of Passenger Vessels & Information Processing.

(3) Office of Transportation Intermediaries.

(j) Bureau of Enforcement. (Area Representatives.)

(k) Bureau of Trade Analysis.

(1) Office of Agreements.

(2) Office of Economics & Competition Analysis.

(3) Office of Service Contracts & Tariffs.

(l) Boards and Committees.

(1) Executive Resources Board.

(2) Performance Review Board.

§ 501.4 Lines of responsibility.

(a) *Chairman.* The Office of the Secretary, the Office of the General Counsel, the Office of Administrative Law Judges, the Office of Equal Employment Opportunity, the Office of the Inspector General, the Office of the Executive Director, and officials performing the functions of Information Security Officer and Designated Agency Ethics Official, report to the Chairman of the Commission.

(b) *Office of the Executive Director.* The Bureau of Consumer Complaints and Licensing, Bureau of Enforcement, Bureau of Trade Analysis, and the Office of Budget and Financial Management, Office of Human Resources, Office of Information Resources Management, and Office of Management Services report to the Office of the Executive Director. The Office of Equal Employment Opportunity and the Office of the Inspector General receive administrative assistance from the Executive Director. All other units of the Commission receive administrative guidance from the Executive Director.

(c) *Bureau of Enforcement and Area Representatives.* The Area Representatives report to the Director, Bureau of Enforcement.

§ 501.5 Functions of the organizational components of the Federal Maritime Commission.

As further provided in subpart C of this part, the functions, including the delegated authority of the Commission's organizational components and/or officials to exercise their functions and to take all actions necessary to direct and carry out their assigned duties and responsibilities under the lines of responsibility set forth in § 501.4, are briefly set forth as follows:

(a) *Chairman.* As the chief executive and administrative officer of the Commission, the Chairman presides at meetings of the Commission, administers the policies of the Commission to its responsible officials, and ensures the efficient discharge of their responsibilities. The Chairman provides management direction to the Offices of Equal Employment Opportunity, Inspector General, Secretary, General Counsel, Administrative Law Judges, and Executive Director with respect to all matters concerning overall Commission workflow, resource allocation (both staff and budgetary), work priorities and similar managerial matters; and establishes, as necessary, various committees and boards to address overall operations of the agency. The Chairman serves as appeals officer under the Freedom of Information Act, the Privacy Act, and the Federal Activities Inventory Reform Act of 1998. The Chairman appoints the heads of major administrative units after consultation with the other Commissioners. In addition, the Chairman, as "head of the agency," has certain responsibilities under Federal laws and directives not specifically related to shipping. For example, the special offices or officers within the Commission, listed under paragraphs (a)(1) through (a)(4) of this section, are appointed or designated by the Chairman, are under his or her direct supervision and report directly to the Chairman:

(1) Under the direction and management of the Office Director, the Office of Equal Employment Opportunity ("EEO") ensures that statutory and regulatory prohibitions against discrimination in employment and the requirements for related programs are fully implemented. As such, the Office administers and implements comprehensive programs on discrimination complaints processing, affirmative action and special emphasis. The Director, EEO, advises the Chairman regarding EEO's plans, procedures, regulations, reports and other matters pertaining to policy and the agency's programs. Additionally, the Director provides leadership and advice to managers and supervisors in carrying out their respective responsibilities in equal employment opportunity. The Office administers and implements these program responsibilities in accordance with Equal Employment Opportunity Commission ("EEOC") Regulations at 29

CFR Part 1614 and other relevant EEOC Directives and Bulletins.

(2) Under the direction and management of the Inspector General, the Office of Inspector General conducts, supervises and coordinates audits and investigations relating to the programs and operations of the Commission; reviews existing and proposed legislation and regulations pertaining to such programs and operations; provides leadership and coordination and recommends policies for activities designed to promote economy, efficiency, and effectiveness in the administration of, and to prevent and detect waste, fraud and abuse in, such programs and operations; and advises the Chairman and the Congress fully and currently about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action.

(3) The Information Security Officer is a senior agency official designated under § 503.52 of this chapter to direct and administer the Commission's information security program, which includes an active oversight and security education program to ensure effective implementation of Executive Orders 12958 and 12968.

(4) The Designated Agency Ethics Official and Alternate are appropriate agency employees formally designated under 5 CFR 2638.202 and § 508.101 of this chapter to coordinate and manage the ethics program as set forth in 5 CFR 2638.203, which includes the functions of advising on matters of employee responsibilities and conduct, and serving as the Commission's designee(s) to the Office of Government Ethics on such matters. They provide counseling and guidance to employees on conflicts of interest and other ethical matters.

(b) *Commissioners.* The members of the Commission, including the Chairman, implement various shipping statutes and related directives by rendering decisions, issuing orders, and adopting and enforcing rules and regulations governing persons subject to the shipping statutes; and perform other duties and functions as may be appropriate under reorganization plans, statutes, executive orders, and regulations.

(c) *Secretary.* Under the direction and management of the Secretary, the Office of the Secretary:

(1) Is responsible for the preparation, maintenance and disposition of the official files and records documenting the business of the Commission. In this regard, the Office:

(i) Prepares and, as appropriate, publishes agenda of matters for action by the Commission, prepares and maintains the minutes with respect to such actions; signs, serves and issues, on behalf of the Commission, documents implementing such actions, and coordinates follow-up thereon.

(ii) Receives and processes formal and informal complaints involving alleged statutory violations, petitions for relief, special dockets applications, applications to correct clerical or administrative errors in service contracts, requests for conciliation service, staff recommendations for investigation and rulemaking proceedings, and motions and filings relating thereto.

(iii) Disseminates information regarding the proceedings, activities, functions, and responsibilities of the Commission to the maritime industry, news media, general public, and other government agencies. In this capacity the Office also:

(A) Administers the Commission's Freedom of Information Act, Privacy Act and Government in the Sunshine Act responsibilities; the Secretary serves as the Freedom of Information Act and Privacy Act Officer.

(B) Authenticates records of the Commission.

(C) Receives and responds to subpoenas directed to Commission personnel and/or records.

(D) Compiles and publishes the bound volumes of Commission decisions.

(E) Coordinates publication of documents, including rules and modifications thereto with the Office of the Federal Register; the Secretary serves as the Federal Register Liaison Officer and Certifying Officer.

(F) Oversees the content and organization of the Commission's web site and authorizes the publication of documents thereon.

(2) Through the Secretary and, in the absence or preoccupation of the Secretary, through the Assistant Secretary, administers oaths pursuant to 5 U.S.C. 2903(b).

(3) Manages the Commission's library and related services.

(d) *General Counsel.* Under the direction and management of the General Counsel, the Office of the General Counsel:

(1) Reviews for legal sufficiency all staff memoranda and recommendations that are presented for Commission action and staff actions acted upon pursuant to delegated authority under §§ 501.26(e) and 501.26(g).

(2) Provides written or oral legal opinions to the Commission, to the staff, and to the general public in appropriate cases.

(3) Prepares and/or reviews for legal sufficiency, before service, all final Commission decisions, orders, and regulations.

(4) Monitors, reviews and, as requested by the Committees of the Congress, the Office of Management and Budget, or the Chairman, prepares comments on all legislation introduced in the Congress affecting the Commission's programs or activities, and prepares draft legislation or amendments to legislation; coordinates such matters with the appropriate Bureau, Office or official and advises appropriate Commission officials of legislation which may impact the programs and activities of the Commission. Also prepares testimony for Congressional hearings and responses to requests from Congressional offices.

(5) Serves as the legal representative of the Commission in courts and in administrative proceedings before other Government agencies.

(6) Monitors and reports on international maritime developments, including laws and practices of foreign governments which affect ocean shipping; and identifies potential state-controlled carriers within the meaning of section 3(8) of the Shipping Act of 1984, researches their status, and makes recommendations to the Commission concerning their classification.

(7) Represents the Commission in U.S. Government interagency groups dealing with international maritime issues; serves as a technical advisor on regulatory matters in bilateral and multilateral maritime discussions; and coordinates Commission activities through liaison with other Government agencies and programs and international organizations.

(8) Screens, routes, and maintains custody of U.S. Government and international organization documents, subject to the classification and safekeeping controls administered by the Commission's Information Security Officer.

(9) Reviews for legal sufficiency all adverse personnel actions, procurement activities, Freedom of Information Act and Privacy Act matters and other administrative actions.

(10) The General Counsel, or a person designated by the General Counsel, serves as the Chair of the Permanent Task Force on International Affairs.

(e) *Administrative Law Judges.* Under the direction and management of the Chief Administrative Law Judge, the Office of Administrative Law Judges holds hearings and renders initial or recommended decisions in formal rulemaking and adjudicatory

proceedings as provided in the Shipping Act of 1984, and other applicable laws and other matters assigned by the Commission, in accordance with the Administrative Procedure Act and the Commission's Rules of Practice and Procedure.

(f) *The Office of the Executive Director.*

(1) The Executive Director:

(i) As senior staff official, is responsible to the Chairman for the management and coordination of Commission programs managed by the operating Bureaus of Enforcement; Consumer Complaints and Licensing; and Trade Analysis, as more fully described in paragraphs (g) through (i) of this section, and thereby implements the regulatory policies of the Commission and the administrative policies and directives of the Chairman;

(ii) Provides administrative guidance to all units of the Commission other than the operating bureaus listed in paragraph (f)(1) of this section, except the Offices of Equal Employment Opportunity and the Inspector General, which are provided administrative assistance;

(iii) Is the agency's Senior Procurement Executive under 41 U.S.C. 414(3) and Commission Order No. 112;

(iv) Is the Designated Senior Information Resources Management Official under 44 U.S.C. 501–520 and 3501–3520 and Commission Order No. 117;

(v) Is the Audit Follow-up and Management (Internal) Controls Official for the Commission under Commission Orders 103 and 106; and

(vi) Is the agency's Chief Operating Officer, as appointed by the Chairman in response to the President's October 1, 1993, memorandum on management reform.

(vii) The Deputy Executive Director is the Commission's Chief Financial Officer.

(2) The Office of the Executive Director ensures the periodic review and updating of Commission orders. Under the direction and management of the Executive Director, the Office of the Executive Director is responsible for the management and coordination of the Offices of: Information Resources Management; Management Services; Budget and Financial Management; and Human Resources. The Office of the Executive Director provides administrative support to the program operations of the Commission. The Executive Director interprets governmental policies and programs and administers these in a manner consistent with Federal guidelines, including those involving information resources, procurement, financial management and personnel. The Office initiates recommendations, collaborating with other elements of the Commission as warranted, for long-range plans, new or revised policies and standards, and rules and regulations, with respect to its program activities. The Executive Director is responsible for directing and administering the Commission's training and development function. The Deputy Executive Director is the Commission's Competition Advocate under 41 U.S.C. 418(a) and Commission Order No. 112, as well as the Commission's representative to the Small Agency Council. Other programs are carried out by its Offices, as follows:

(i) The Office of Information Resources Management, under the direction and management of the Office Director, administers the Commission's information resources management ("IRM") program under the Paperwork Reduction Act of 1995, as amended, as well as other applicable laws which prescribe responsibility for operating the IRM program. The Office provides administrative support with respect to information resources management to the program operations of the Commission. The Office interprets governmental policies and programs for information management and administers these in a manner consistent with federal guidelines. The Office initiates recommendations, collaborating with other elements of the Commission as warranted, for long range plans, new or revised policies and standards, and rules and regulations with respect to its program activities. The Office's functions include: conducting IRM management studies and surveys; managing data telecommunications; developing and managing databases and applications; coordinating records management activities; administering IRM contracts; and developing Paperwork Reduction Act clearances for submission to the Office of Management and Budget. The Office is also responsible for managing the computer security and the records and forms programs. The Director of the Office serves as Senior IRM Manager, Forms Control Officer, Computer Security Officer, and Records Management Officer.

(ii) The Office of Management Services, under the direction and management of the Office Director, directs and administers a variety of management support service functions of the Commission. The Director of the Office is the Commission's principal Contracting Officer under Commission Order No. 112. Programs include communications; audio and voice telecommunications; procurement of and contracting for administrative goods and services, including the utilization of small and disadvantaged businesses; management of property, space, printing and copying; mail and records services; forms and graphic designs; facilities and equipment maintenance; and transportation.

(iii) The Office of Budget and Financial Management, under the direction and management of the Office Director, administers the Commission's financial management program, including fiscal accounting activities, fee and forfeiture collections, and payments, and ensures that Commission obligations and expenditures of appropriated funds are proper; develops annual budget justifications for submission to the Congress and the Office of Management and Budget; develops and administers internal controls systems that provide accountability for agency funds; administers the Commission's travel and cash management programs, as well as the Commission's Imprest Funds; ensures accountability for official passports; and assists in the development of proper levels of user fees.

(iv) The Office of Human Resources, under the direction and management of the Office Director, plans and administers a complete personnel management program including: recruitment and placement; position classification and pay administration; occupational safety and health; employee counseling services; employee relations; workforce discipline; performance appraisal; incentive awards; retirement; and personnel security.

(g) The *Bureau of Trade Analysis,* under the direction and management of the Bureau Director, through its Office of Agreements; Office of Economics and Competition Analysis; and Office of Service Contracts and Tariffs, reviews agreements and monitors the concerted activities of common carriers by water, reviews and analyzes service contracts, monitors rates of government controlled carriers, reviews carrier published tariff systems under the accessibility and accuracy standards of the Shipping Act of 1984, responds to inquiries or issues that arise concerning service contracts or tariffs, and is responsible for competition oversight and market analysis.

(h) The *Bureau of Consumer Complaints and Licensing,* under the direction and management of the Bureau Director:

(1) Through the Office of Consumer Complaints, has responsibility for

developing and implementing the Alternative Disputes Resolution Program, responds to consumer inquiries and complaints, and coordinates the Commission's efforts to resolve disputes within the shipping industry. The Deputy Bureau Director is designated as the agency Dispute Resolution Specialist pursuant to section 3 of the Administrative Dispute Resolution Act of 1996, Pub. L. 104–320.

(2) Through the Office of Transportation Intermediaries, has responsibility for reviewing applications for Ocean Transportation Intermediary ("OTI") licenses, and maintaining records about licensees.

(3) Through the Office of Passenger Vessels and Information Processing, has responsibility for reviewing applications for certificates of financial responsibility with respect to passenger vessels, managing all activities with respect to evidence of financial responsibility for OTIs and passenger vessel owner/operators, and for developing and maintaining all Bureau databases and records of OTI applicants and licensees.

(i) *Bureau of Enforcement; Area Representatives.* Under the direction and management of the Bureau Director, the Bureau of Enforcement:

(1) Participates as trial counsel in formal Commission proceedings when designated by Commission order, or when intervention is granted;

(2) Initiates, processes and negotiates the informal compromise of civil penalties under § 501.28 of this part and § 502.604 of this chapter, and represents the Commission in proceedings and circumstances as designated;

(3) Acts as staff counsel to the Executive Director and other bureaus and offices;

(4) Coordinates with other bureaus and offices to provide legal advice, attorney liaison, and prosecution, as warranted, in connection with enforcement matters;

(5) Conducts investigations leading to enforcement action, advises the Federal Maritime Commission of evolving competitive practices in international commerce, assesses the practical repercussions of Commission regulations, educates the industry regarding policy and statutory requirements, and provides liaison, cooperation, and other coordination between the Commission and the maritime industry, shippers, and other government agencies; and

(6) Maintains a presence in locations other than Washington, D.C. through Area Representatives whose activities include the following:

(i) Representing the Commission within their respective geographic areas;

(ii) Providing liaison between the Commission and the shipping industry and interested public; conveying pertinent information regarding regulatory activities and problems; and recommending courses of action and solutions to problems as they relate to the shipping public, the affected industry, and the Commission;

(iii) Furnishing to interested persons information, advice, and access to Commission public documents;

(iv) Receiving and resolving informal complaints, in coordination with the Director, Office of Consumer Complaints;

(v) Investigating potential violations of the shipping statutes and the Commission's regulations:

(vi) Conducting shipping industry surveillance programs to ensure compliance with the shipping statutes and Commission regulations. Such programs include common carrier audits, service contract audits and compliance checks of ocean transportation intermediaries;

(vii) Upon request of the Bureau of Consumer Complaints and Licensing, auditing passenger vessel operators to determine the adequacy of performance bonds and the availability of funds to pay liability claims for death or injury, and assisting in the background surveys of ocean transportation intermediary applicants;

(viii) Conducting special surveys and studies, and recommending policies to strengthen enforcement of the shipping laws;

(ix) Maintaining liaison with Federal and State agencies with respect to areas of mutual concern; and

(x) Providing assistance to the various bureaus and offices of the Commission as appropriate and when requested.

(j) *Boards and Committees.* The following boards and committees are established by separate Commission orders to address matters relating to the overall operations of the Commission:

(1) The *Executive Resources Board* is comprised of three voting members, chosen from the ranks of those above the grade 15 level, with the majority being career members of the Senior Executive Service. The members serve staggered terms of three years, beginning October 1 of each year; the member serving in the last year of his/her term serves as Chairman. The board meets on an ad hoc basis to discuss, develop and submit recommendations to the Chairman on matters related to the merit staffing process for career appointments in the Senior Executive Service, including the executive qualifications of candidates for career appointment. The board also plans and manages the Commission's executive development programs. Serving the board in a non-voting advisory capacity are the Director, Office of Equal Employment Opportunity, the Training Officer, and the Director, Office of Human Resources, who also serves as the board's secretary. Commission Order No. 95.

(2) *The Performance Review Board* is chaired by a Commissioner designated by the Chairman, and is composed of a standing register of members which is published in the **Federal Register**. Once a year, the PRB Chairman appoints performance review panels from the membership to review individual performance appraisals and other relevant information pertaining to Senior Executives at the Commission, and to recommend final performance ratings to the Chairman. Commission Order No. 115. Every three years, the PRB considers supervisors' recommendations as to whether Senior Executives of the Commission should be recertified under the Ethics Reform Act of 1989, and makes appropriate recommendations to the Commission's Chairman. Commission Order No. 118.

Subpart B—Official Seal

§ 501.11 Official seal.

(a) *Description.* Pursuant to section 201(c) of the Merchant Marine Act, 1936, as amended (46 U.S.C. app. 1111(c)), the Commission prescribes its official seal, as adopted by the Commission on August 14, 1961, which shall be judicially noticed. The design of the official seal is described as follows:

(1) A shield argent paly of six gules, a chief azure charged with a fouled anchor or; shield and anchor outlined of the third; on a wreath argent and gules, an eagle displayed proper; all on a gold disc within a blue border, encircled by a gold rope outlined in blue, and bearing in white letters the inscription "Federal Maritime Commission" in upper portion and "1961" in lower portion.

(2) The shield and eagle above it are associated with the United States of America and denote the national scope of maritime affairs. The outer rope and fouled anchor are symbolic of seamen and waterborne transportation. The date "1961" has historical significance, indicating the year in which the Commission was created.

(b) *Design.*

Subpart C—Delegation and Redelegation of Authorities

§ 501.21 Delegation of authorities.

(a) *Authority and delegation.* Section 105 of Reorganization Plan No. 7 of 1961, August 12, 1961, authorizes the Commission to delegate, by published order or rule, any of its functions to a division of the Commission, an individual Commissioner, an administrative law judge, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business or matter. In subpart A of this part, the Commission has delegated general functions, and in this subpart C, it is delegating miscellaneous, specific authorities set forth in §§ 501.23, *et seq.*, to the delegatees designated therein, subject to the limitations prescribed in subsequent subsections of this section.

(b) *Deputies.* Where bureau or office deputies are officially appointed, they are hereby delegated all necessary authority to act in the absence or incapacity of the director or chief.

(c) *Redelegation.* Subject to the limitations in this section, the delegatees may redelegate their authorities to subordinate personnel under their supervision and direction; but only if this subpart is amended to reflect such redelegation and notice thereof is published in the **Federal Register**. Under any redelegated authority, the redelegator assumes full responsibility for actions taken by subordinate redelegatees.

(d) *Exercise of authority; policy and procedure.* The delegatees and redelegatees shall exercise the authorities delegated or redelegated in a manner consistent with applicable laws and the established policies of the Commission, and shall consult with the General Counsel where appropriate.

(e) *Exercise of delegated authority by delegator.* Under any authority delegated or redelegated, the delegator (Commission), or the redelegator, respectively, shall retain full rights to exercise the authority in the first instance.

(f) *Review of delegatee's action.* The delegator (Commission) or redelegator of authority shall retain a discretionary right to review an action taken under delegated authority by a subordinate delegatee, either upon the filing of a written petition of a party to, or an intervenor in, such action; or upon the delegator's or redelegator's own initiative.

(1) Petitions for review of actions taken under delegated authority shall be filed within ten (10) calendar days of the action taken:

(i) If the action for which review is sought is taken by a delegatee, the petition shall be addressed to the Commission pursuant to § 502.69 of this chapter.

(ii) If the action for which review is sought is taken by a redelegatee, the petition shall be addressed to the redelegator whose decision can be further reviewed by the Commission under paragraph (f)(1)(i) of this section, unless the Commission decides to review the matter directly, such as, for example, in the incapacity of the redelegator.

(2) The vote of a majority of the Commission less one member thereof shall be sufficient to bring any delegated action before the Commission for review under this paragraph.

(g) *Action—when final.* Should the right to exercise discretionary review be declined or should no such review be sought under paragraph (f) of this section, then the action taken under delegated authority shall, for all purposes, including appeal or review thereof, be deemed to be the action of the Commission.

(h) *Conflicts.* Where the procedures set forth in this section conflict with law or any regulation of this chapter, the conflict shall be resolved in favor of the law or other regulation.

§ 501.22 [Reserved].

§ 501.23 Delegation to the General Counsel.

The authority listed in this section is delegated to the General Counsel: Authority to classify carriers as state-controlled carriers within the meaning of section 3(8) of the Shipping Act of 1984, except where a carrier submits a rebuttal statement pursuant to § 565.3(b) of this chapter.

§ 501.24 Delegation to the secretary.

The authorities listed in this section are delegated to the Secretary (and, in the absence or preoccupation of the Secretary, to the Assistant Secretary).

(a) Authority to approve applications for permission to practice before the Commission and to issue admission certificates to approved applicants.

(b) Authority to extend the time to file exceptions or replies to exceptions, and the time for Commission review, relative to initial decisions of administrative law judges and decisions of Special Dockets Officers.

(c) Authority to extend the time to file appeals or replies to appeals, and the time for Commission review, relative to dismissals of proceedings, in whole or in part, issued by administrative law judges.

(d) Authority to establish and extend or reduce the time:

(1) To file documents either in docketed proceedings or relative to petitions filed under part 502 of this chapter, which are pending before the Commission itself; and

(2) To issue initial and final decisions under § 502.61 of this chapter.

(e) Authority to prescribe a time limit for the submission of written comments

with reference to agreements filed pursuant to section 5 of the Shipping Act of 1984.

(f) Authority, in appropriate cases, to publish in the **Federal Register** notices of intent to prepare an environmental assessment and notices of finding of no significant impact.

(g) Authority to prescribe a time limit less than ten days from date published in the **Federal Register** for filing comments on notices of intent to prepare an environmental assessment and notice of finding of no significant impact and authority to prepare environmental assessments of no significant impact.

(h) Authority, in the absence or preoccupation of the Executive Director and Deputy Executive Director, to sign travel orders, nondocketed recommendations to the Commission, and other routine documents for the Executive Director, consistent with the programs, policies, and precedents established by the Commission or the Executive Director.

§ 501.25 Delegation to and redelegation by the Executive Director.

Except where specifically redelegated in this section, the authorities listed in this section are delegated to the Executive Director.

(a) Authority to adjudicate, with the concurrence of the General Counsel, and authorize payment of, employee claims for not more than $1,000.00, arising under the Military and Civilian Personnel Property Act of 1964, 31 U.S.C. 3721.

(b) Authority to determine that an exigency of the public business is of such importance that annual leave may not be used by employees to avoid forfeiture before annual leave may be restored under 5 U.S.C. 6304.

(c)(1) Authority to approve, certify, or otherwise authorize those actions dealing with appropriations of funds made available to the Commission including allotments, fiscal matters, and contracts relating to the operation of the Commission within the laws, rules, and regulations set forth by the Federal Government.

(2) The authority under this paragraph is redelegated to the Director, Office of Budget and Financial Management.

(d)(1) Authority to classify all positions GS–1 through GS–15 and wage grade positions.

(2) The authority under this paragraph is redelegated to the Director, Office of Human Resources.

§ 501.26 Delegation to the Director, Bureau of Trade Analysis.

The authorities listed in this section are delegated to the Director, Bureau of Trade Analysis.

(a) Authority to determine that no action should be taken to prevent an agreement or modification to an agreement from becoming effective under section 6(c)(1), and to shorten the review period under section 6(e), of the Shipping Act of 1984, when the agreement or modification involves solely a restatement, clarification or change in an agreement which adds no new substantive authority beyond that already contained in an effective agreement. This category of agreement or modification includes, for example, the following: A restatement filed to conform an agreement to the format and organization requirements of part 535 of this chapter; a clarification to reflect a change in the name of a country or port or a change in the name of a party to the agreement; a correction of typographical or grammatical errors in the text of an agreement; a change in the title of persons or committees designated in an agreement; or a transfer of functions from one person or committee to another.

(b) Authority to grant or deny applications filed under § 535.406 of this chapter for waiver of the form, organization and content requirements of §§ 535.401, 535.402, 535.403, 535.404 and 535.405 of this chapter.

(c) Authority to grant or deny applications filed under § 535.505 of this chapter for waiver of the information form requirements of §§ 535.503 and 535.504 of this chapter.

(d) Authority to grant or deny applications filed under § 535.709 of this chapter for waiver of the reporting and record retention requirements of §§ 535.701, 535.702, 535.703, 535.704, 535.705, 535.706, 535.707 and 535.708 of this chapter.

(e) Authority to determine that no action should be taken to prevent an agreement or modification of an agreement from becoming effective under section 6(c)(1) of the Shipping Act of 1984 for all unopposed agreements and modifications to agreements which will not result in a significant reduction in competition. Agreements which are deemed to have the potential to result in a significant reduction in competition and which, therefore, are not covered by this delegation include but are not limited to:

(1) New agreements authorizing the parties to collectively discuss or fix rates (including terminal rates).

(2) New agreements authorizing the parties to pool cargoes or revenues.

(3) New agreements authorizing the parties to establish a joint service or consortium.

(4) New equal access agreements.

(f) Authority to grant or deny shortened review pursuant to § 535.605 of this chapter for agreements for which authority is delegated in paragraph (e) of this section.

(g) Subject to review by the General Counsel, authority to deny, but not approve, requests filed pursuant to § 535.605 of this chapter for a shortened review period for agreements for which authority is not delegated under paragraph (e) of this section.

(h) Authority to issue notices of termination of agreements which are otherwise effective under the Shipping Act of 1984, after publication of notice of intent to terminate in the **Federal Register**, when such terminations are:

(1) Requested by the parties to the agreement;

(2) Deemed to have occurred when it is determined that the parties are no longer engaged in activity under the agreement and official inquiries and correspondence cannot be delivered to the parties; or

(3) Deemed to have occurred by notification of the withdrawal of the next to last party to an agreement without notification of the addition of another party prior to the effective date of the next to last party's withdrawal.

(i) Authority to determine whether agreements for the use or operation of terminal property or facilities, or the furnishing of terminal services, are within the purview of section 5 of the Shipping Act of 1984.

(j) Authority to request controlled carriers to file justifications for existing or proposed rates, charges classifications, rules or regulations. and review responses to such requests for the purpose of recommending to the Commission that a rate, charge, classification, rule or regulation be found unlawful and, therefore, requires Commission action under section 9(d) of the Shipping Act of 1984.

(k) Authority to recommend to the Commission the initiation of formal proceedings or other actions with respect to suspected violations of the shipping statutes and rules and regulations of the Commission.

(l)(1) Authority to approve for good cause or disapprove special permission applications submitted by common carriers, or conferences of such carriers, subject to the provisions of section 8 of the Shipping Act of 1984, for relief from statutory and/or Commission tariff requirements.

(2) The authority under this paragraph is redelegated to the Director, Office of Service Contracts and Tariffs.

(m)(1) Authority to approve or disapprove special permission applications submitted by a controlled carrier subject to the provisions of section 9 of the Shipping Act of 1984 for relief from statutory and/or Commission tariff requirements.

(2) The authority under this paragraph is redelegated to the Director, Office of Service Contracts and Tariffs, in the Bureau of Trade Analysis.

(n) Authority contained in Part 530 of this chapter to approve, but not deny, requests for permission to correct clerical or administrative errors in the essential terms of filed service contracts.

§ 501.27 Delegation to the Director, Bureau of Consumer Complaints and Licensing.

(a)(1) Authority to:

(i) Approve or disapprove applications for ocean transportation intermediary licenses; issue or reissue or transfer such licenses; and approve extensions of time in which to furnish the name(s) and ocean transportation intermediary experience of the managing partner(s) or officer(s) who will replace the qualifying partner or officer upon whose qualifications the original licensing was approved;

(ii) Issue a letter stating that the Commission intends to deny an ocean transportation intermediary application, unless within 20 days, applicant requests a hearing to show that denial of the application is unwarranted; deny applications where an applicant has received such a letter and has not requested a hearing within the notice period; and rescind, or grant extensions of, the time specified in such letters;

(iii) Revoke the license of an ocean transportation intermediary upon the request of the licensee;

(iv) Upon receipt of notice of cancellation of any instrument evidencing financial responsibility, notify the licensee in writing that its license will automatically be suspended or revoked, effective on the cancellation date of such instrument, unless new or reinstated evidence of financial responsibility is submitted and approved prior to such date, and subsequently order such suspension or revocation for failure to maintain proof of financial responsibility;

(v) Revoke the ocean transportation intermediary license of a non-vessel-operating common carrier not in the United States for failure to designate and maintain a person in the United States as legal agent for the receipt of judicial and administrative process;

(vi) Approve changes in an existing licensee's organization; and

(vii) Return any application which on its face fails to meet the requirements of the Commission's regulations, accompanied by an explanation of the reasons for rejection.

(2) The authorities contained in paragraphs (a)(1)(iii) and (a)(1)(iv) of this section are redelegated to the Director, Office of Transportation Intermediaries, in the Bureau of Consumer Complaints and Licensing.

(b) Authority to:

(1) Approve applications for Certificates (Performance) and Certificates (Casualty) for passenger vessels, evidenced by a surety bond, guaranty or insurance policy, or combination thereof; and issue, reissue, or amend such Certificates;

(2) Issue a written notice to an applicant stating intent to deny an application for a Certificate (Performance) and/or (Casualty), indicating the reason therefor, and advising applicant of the time for requesting a hearing as provided for under § 540.26(c) of this chapter; deny any application where the applicant has not submitted a timely request for a hearing; and rescind such notices and grant extensions of the time within which a request for hearing may be filed;

(3) Issue a written notice to a certificant stating that the Commission intends to revoke, suspend, or modify a Certificate (Performance) and/or (Casualty), indicating the reason therefor, and advising of the time for requesting a hearing as provided for under § 540.26(c) of this chapter; revoke, suspend or modify a Certificate (Performance) and/or (Casualty) where the certificant has not submitted a timely request for hearing; and rescind such notices and grant extensions of time within which a request for hearing may be filed;

(4) Revoke a Certificate (Performance) and/or (Casualty) which has expired, and/or upon request of, or acquiescence by, the certificant; and

(5) Notify a certificant when a Certificate (Performance) and/or (Casualty) has become null and void in accordance with §§ 540.8(a) and 540.26(a) of this chapter.

(c) Authority to approve amendments to escrow agreements filed under § 540.5(b) when such amendments are for the purpose of changing names of principals, changing the vessels covered by the escrow agreement, changing the escrow agent, and changing the amount of funds held in escrow, provided that the changes in amount of funds results in an amount of coverage that complies with the requirements in the introductory text of § 540.5.

§ 501.28 Delegation to the Director, Bureau of Enforcement.

The authorities listed in this section are delegated to the Director, Bureau of Enforcement. Notwithstanding the provisions of § 501.21, the Director may delegate or redelegate, in writing, specific authority to individuals within the Bureau of Enforcement other than the Deputy Director.

(a) Authority to compromise civil penalty claims has been delegated to the Director, Bureau of Enforcement, by § 502.604(g) of this chapter. This delegation shall include the authority to compromise issues relating to the retention, suspension or revocation of ocean transportation intermediary licenses.

(b) Authority to approve administrative leave for Area Representatives.

Subpart D—Public Requests for Information

§ 501.41 Public requests for information and decisions.

(a) *General.* Pursuant to 5 U.S.C. 552(a)(1)(A), there is hereby stated and published for the guidance of the public the established places at which, the officers from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions, principally by contacting by telephone, in writing, or in person, either the Secretary of the Commission at the Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, or the Area Representatives listed in paragraph (d) of this section. See also Part 503 of this chapter.

(b) The *Secretary* will provide information and decisions, and will accept and respond to requests, relating to the program activities of the Office of the Secretary and of the Commission, generally. Unless otherwise provided in this chapter, any document, report, or other submission required to be filed with the Commission by statute or the Commission's rules and regulations relating to the functions of the Commission or of the Office of the Secretary shall be filed with or submitted to the Secretary.

(c) *The Directors of the following bureaus and offices* will provide information and decisions, and will accept and respond to requests, relating to the specific functions or program activities of their respective bureaus and offices as set forth in this chapter; but only if the dissemination of such

information or decisions is not prohibited by statute or the Commission's Rules of Practice and Procedure:

(1) Office of the General Counsel
(2) Office of the Administrative Law Judges
(3) Office of the Executive Director
(4) Office of the Inspector General
(5) Office of Equal Employment Opportunity
(6) Bureau of Enforcement
(7) Bureau of Trade Analysis
(8) Bureau of Consumer Complaints and Licensing
(9) Office of Management Services
(10) Office of Human Resources
(11) Office of Budget and Financial Management
(12) Office of Information Resources Management
(13) Office of Consumer Complaints

(d) The *Area Representatives* will provide information and decisions to the public within their geographic areas, or will expedite the obtaining of information and decisions from headquarters. The addresses of these Area Representatives are as follows. Further information on Area Representatives, including Internet e-mail addresses, can be obtained on the Commission's home page at "http://www.fmc.gov."

Los Angeles

Los Angeles Area Representative, U.S. Customs House Building, P.O. Box 3164, 300 S. Ferry Street, Room 1018, Terminal Island Station, San Pedro, CA 90731

Miami

Miami Area Representative, Customs Management Center, 909 SE, 1st Ave., Room 705, Miami, FL 33131

New Orleans

New Orleans Area Representative, U.S. Customs House, 423 Canal Street, Room 309B, New Orleans, LA 70130

New York

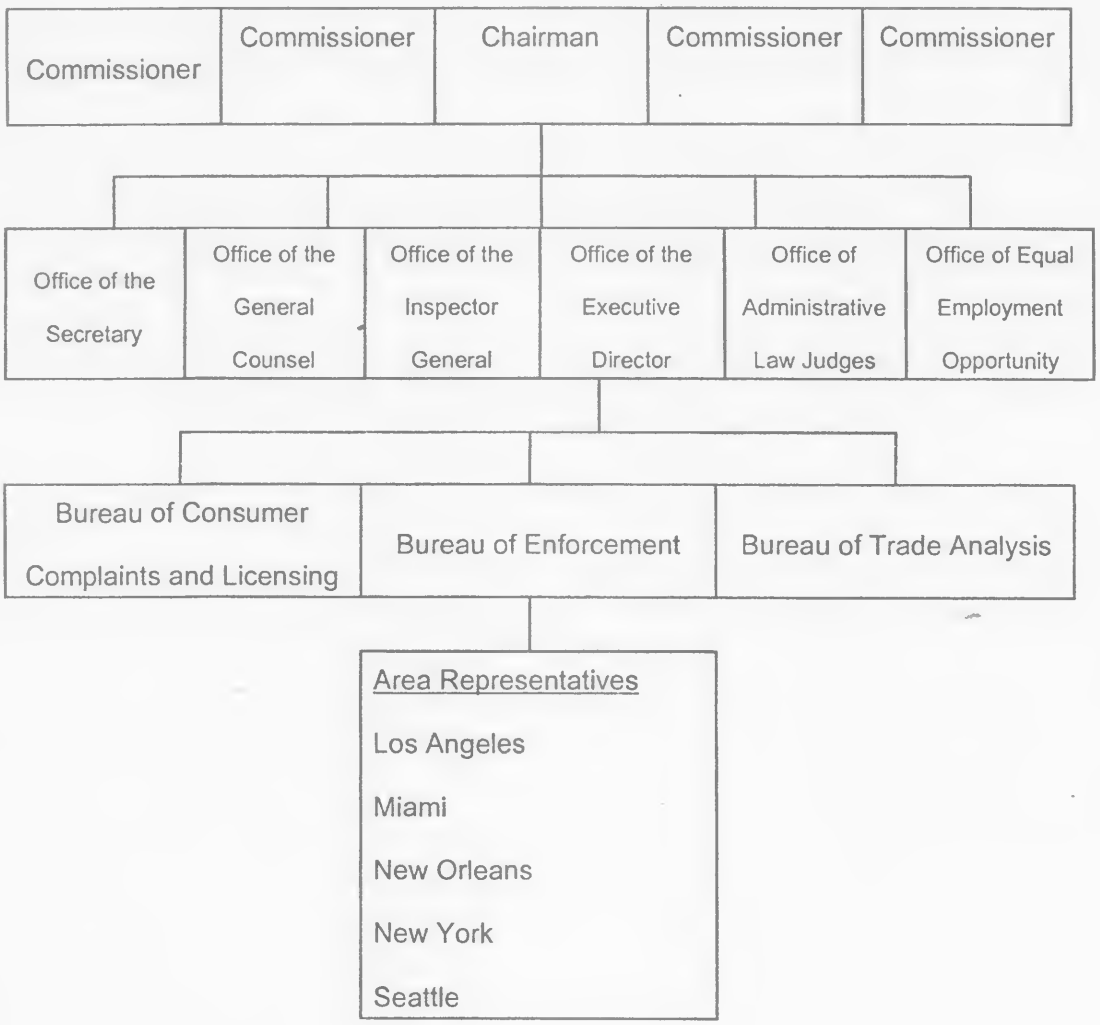
New York Area Representative, P.O. Box 3461, Church Street Station, New York, NY 10008

Seattle

Seattle Area Representative, c/o U.S. Customs Service, 7 South Nevada Street, Suite 100, Seattle, WA 98134

(e) *Submissions to bureaus and offices.* Any document, report or other submission required to be filed with the Commission by statute or the Commission's rules and regulations relating to the specific functions of the bureaus and offices shall be filed with or submitted to the Director of such Bureau or Office.

Appendix A - Federal Maritime Commission Organization Chart



PART 502—RULES OF PRACTICE AND PROCEDURE

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

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561–569, 571–596; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. app. 1114(b), 1705, 1707–1711, 1713–1716; E.O. 11222 of May 8, 1965 (30 FR 6469); 21 U.S.C. 853a; Pub. L. 89–777 (46 U.S.C. app. 817d, 817e); and Pub. L. 105–258, 112 Stat. 1902.

2. § 502.44, revise paragraph (c) to read as follows:

§ 502.44 Necessary and proper parties in certain complaint proceedings.

* * * * *

(c) If complaint is made with respect to an agreement filed under section 5(a) of the Shipping Act of 1984, the parties to the agreement shall be made respondents. (Rule 44).

3. In § 502.68, revise the fourth sentence of paragraph (b) to read as follows:

§ 502.68 Declaratory orders and fees.

* * * * *

(b) * * * Such matters must be adjudicated either by filing of a complaint under section 11 of the Shipping Act of 1984 and § 502.62, or by filing of a petition for investigation under § 502.69.

* * * * *

4. In § 502.271, revise paragraph (f)(1) to read as follows:

§ 502.271 Special docket application for permission to refund or waive freight charges.

* * * * *

(f)(1) The Secretary in his discretion shall either forward an application to the Office of Consumer Complaints, in the Bureau of Consumer Complaints and Licensing, for assignment to a Special Dockets Officer, or assign an application to the Office of Administrative Law Judges. Authority to issue decisions under this subpart is delegated to the assigned Special Dockets Officer or Administrative Law Judge.

* * * * *

5. In § 502.301, revise paragraph (b) to read as follows:

§ 502.301 Statement of policy.

* * * * *

(b) With the consent of both parties, claims filed under this subpart in the amount of $10,000 or less will be referred to the Office of Consumer Complaints, in the Bureau of Consumer Complaints and Licensing, for assignment to and decision by a Settlement Officer without the necessity of formal proceedings under the rules of this part. Authority to issue decisions under this subpart is delegated to the assigned Settlement Officer.

6. In Appendix A to Subpart W, remove the phrase "and the Shipping Act, 1916."

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–32819 Filed 12–26–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36 and 54

[CC Docket No. 96–45; DA 00–2729]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Common Carrier Bureau (Bureau) updates line count input values for the new high-cost universal service support mechanism for non-rural carriers for purposes of calculating and targeting support amounts for the year 2001. Specifically, the Bureau shall use updated line count data in the universal service cost model to estimate non-rural carriers' forward-looking economic costs of providing the services supported by the federal high-cost mechanism. In addition, the Bureau clarifies that non-rural support amounts will continue to be adjusted each quarter to account for line growth based on the wire center line count data reported quarterly by non-rural carriers.

DATES: Effective December 27, 2000.

FOR FURTHER INFORMATION CONTACT: Katie King, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of a Common Carrier Bureau's Order in CC Docket No. 96–45 released on December 8, 2000. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

I. Introduction

1. In this Order, we update line count input values for the new high-cost universal service support mechanism for non-rural carriers for purposes of calculating and targeting support amounts for the year 2001. Specifically, we shall use updated line count data in the universal service cost model to estimate non-rural carriers' forward-looking economic costs of providing the services supported by the federal high-cost mechanism. In addition, we clarify that non-rural support amounts will continue to be adjusted each quarter to account for line growth based on the wire center line count data reported quarterly by non-rural carriers.

II. Discussion

2. Consistent with the framework adopted in the *Twentieth Reconsideration Order*, 65 FR 26513, May 8, 2000, we conclude that the cost model should use the year-end 1999 line counts filed July 31, 2000, as input values for purposes of estimating average forward-looking costs and determining support for the year 2001. We also conclude that line counts should be allocated to the classes of service used in the model based on the line count data filed pursuant to the *1999 Data Request*. We conclude further that special access line counts should be allocated on the basis of the *1999 Data Request* data and trued-up to 1999 43–08 ARMIS special access line counts. In addition, we conclude that the Bureau and USAC should use available information to match reported wire centers to wire centers used in the model. Line counts in wire centers that cannot be matched will not be used to estimate average costs, but will be incorporated in the calculation of support amounts, along with the quarterly line counts reported by carriers. Finally, most carriers sought confidential treatment of the *1999 Data Request* data. Such data will be made available pursuant to the *Interim Protective Order* in this proceeding.

3. *1999 Line Counts.* We find that line count input values should be updated so that the model will take into account changes in costs that result from changes in line counts. If line count input values remained static, the model's cost estimates would fail to reflect the economies of scale generated by serving an increasing number of lines. Absent an update of line count input values, the use of reported lines in the support methodology would cause non-rural support to increase indefinitely as reported lines increase. Such a result would be inconsistent with the criteria adopted in the *Universal Service First Report and Order*, 62 FR 32862, June 17, 1997, requiring that the cost model reflect the economies of scale of serving all lines within a geographic area. By updating line count input values, the cost

estimates will reflect the economies of scale resulting from the growth in the number of lines served by non-rural carriers.

4. We also find that the lines reported by carriers on July 31, 2000 (year-end 1999 line counts) are the appropriate data to use for updating the cost model's input values at this time. We are not persuaded by AT&T's argument that we should use as input values projected line counts for the year in which support is provided. Because support currently is provided on the basis of the lines reported by carriers, rather than line count projections, AT&T's proposed solution would not resolve the purported "mismatch" between model lines and reported lines identified by AT&T.

5. For purposes of calculating support in 2001, we will use year-end 1999 line counts in the model and adjust support amounts every quarter to reflect the lines reported by carriers, according to the methodology set forth in the *Twentieth Reconsideration Order*. We defer to a future proceeding the issue of how often line counts and other input values should be updated.

6. We are not persuaded by Qwest's argument that we should not use updated line count data in the cost model unless we also use updated customer location data. Qwest claims that updating only line counts would "artificially depress the cost per line, since the numerator would remain stagnant while the denominator grows." This statement fails to acknowledge how the model estimates forward-looking costs. Qwest concedes that increased line counts reflect one of two situations: (1) additional lines at existing locations; and (2) lines at new locations. When additional lines are added at existing locations the model takes into account additional costs involved, such as larger cable sizes and increased capacity digital loop carriers. Contrary to Qwest's claim, the numerator (estimated forward-looking cost) would not remain stagnant if the model uses updated line count input values. Moreover, we estimate that approximately 65 percent of the increase in residential lines is due to additional lines at existing locations rather than to lines at new locations. Until the Commission adopts new customer location data, all new lines should be treated as additional lines at existing locations in the model, with their additional costs included in the model's cost estimates.

7. Although certain costs associated with new locations may not be reflected in the cost model's estimates until the Commission adopts new customer location data, we agree with AT&T and the Florida PSC that we should not wait until then to update line counts. First, as the Florida PSC points out, more current line count data will be used in determining support amounts whether or not the customer location data are updated. If the line counts used in the model are not updated, the time lag between the model inputs and the reported lines used to determine support would continue to grow without any readjustment. Second, because the model currently uses road surrogate customer location data, the additional costs associated with new locations are less significant than implied by Qwest's argument. If the "missing" new locations are anywhere along the road network used to create the surrogate locations, the outside plant structure costs already would be included in the model's cost estimates. Thus, until the model uses updated customer location data, outside structure costs could be underestimated only to the extent that new locations would be along new roads. Moreover, AT&T argues that outside plant costs are not underestimated, but rather are overestimated. AT&T claims that the use of road surrogate data "greatly overestimates the dispersion in customer locations and, therefore, greatly exaggerates outside plant costs, and hence, per-line costs." We need not find AT&T's claim to be accurate, however, to find that it is reasonable to use updated line counts in the model to determine support for the year 2001. As explained, all of the costs associated with new lines and a substantial portion of the costs associated with "new" locations would be included in the model's cost estimates.

8. *Class of Service Allocations.* We find that using the wire center line count data filed pursuant to the *1999 Data Request* is a reasonable method for allocating line counts to the classes of service used in the model. All commenters addressing this issue support this alternative, although AT&T suggests that it would be preferable to require the local exchange carriers to disaggregate into service classes the USF loops filed on July 31, 2000 (year-end 1999 lines). We do not believe that carriers should be subject to additional reporting requirements at this time, because reasonably accurate class of service allocations can be made easily with the data we already have. We defer to a future proceeding how line count data should be reported by carriers for use in the model in the future.

9. For purposes of 2001 support, line counts shall be allocated to the classes of service used in the model by dividing the year-end 1999 lines reported by non-rural carriers into business lines, residential lines, payphone lines, and single line business lines for each wire center in the same proportion as the lines filed pursuant to the *1999 Data Request* (year-end 1998 lines). As Worldcom points out, although this method reflects the overall line growth specific to the particular wire center, it assumes the same growth rate across service categories in that wire center. Nevertheless, Worldcom suggests that we use this method because it is simpler than the proposed alternative, which makes a different assumption, and both alternatives are likely to give similar results in most cases. We find that either method would be a reasonable way to use the *1999 Data Request* information to allocate the year-end 1999 lines to the switched lines categories used in the model and agree that we should use the simpler method.

10. We use a somewhat different method to determine the number of special lines in each wire center, because the wire center line counts reported by non-rural carriers (USF loops) include only switched lines. Thus, we cannot simply take USF loops and divide them into the *1999 Data Request* line count categories. We conclude that, to determine the relevant number of special lines for each wire center, we shall divide the 1999 ARMIS special access lines among wire centers in the same proportion as the special lines from the *1999 Data Request*. We find that this method of determining special access lines is preferable to either of those proposed by AT&T and Worldcom, which would include state private lines as well as interstate special access lines. At this time, we find that only interstate special access lines should be included, as was done in the past. We also find that we should continue to count special lines as voice grade equivalents rather than as physical pairs, as suggested by Qwest. We conclude this represents a reasonable way to calculate 2001 support amounts, pending any future proceedings to refine input values.

11. *Matching Wire Centers.* We conclude that when updating line counts for purposes of estimating forward-looking costs, the wire centers reported by carriers in their quarterly line count filings should be matched with wire centers found in the *1999 Data Request* and in the model's customer location data. The vast majority of the approximately 12,500 reported wire centers have matching records in these other data sets. In calculating support for the year 2001, we shall use information from other

data sources to correct typographical errors, match wire centers at identical locations, or otherwise reconcile minor discrepancies in the wire center identifiers. In addition, in the process of calculating support amounts for the year 2000, USAC staff received additional matching information from carriers, which shall be incorporated in the Commission's matching process for calculating support amounts for the year 2001. In a small number of cases no matches could be found. We find that line counts in wire centers reported by carriers in their quarterly filings that cannot be matched will not be used to estimate average costs. Such lines will be used in determining support amounts, however, because these lines are included in the quarterly line counts that are used to calculate statewide support amounts, according to the methodology adopted in the *Twentieth Reconsideration Order*. We expect that on an ongoing basis we will find opportunities to make additional improvements in matching wire centers.

12. *Confidentiality.* Most non-rural carriers claim that their wire center line count data are confidential. In April 2000, the Commission denied requests for confidential treatment of quarterly wire center line count data to the limited extent that the number of lines in wire centers receiving support may be determined when the Commission releases per-line and total support amounts. The Commission has not yet determined whether the line count data of wire centers that do not receive support should be afforded confidential treatment and has made such data available to interested parties under the terms of the *Interim Protective Order*. We do not decide, at this time, whether the data submitted pursuant to the *1999 Data Request* should be afforded confidential treatment. The Commission will resolve the separate but related issues raised by these confidentiality requests at a later date. Pending resolution of these issues, the line count data filed pursuant to the *1999 Data Request* will be made available only pursuant to the *Interim Protective Order* previously adopted in this proceeding.

III. Ordering Clauses

13. Pursuant to the authority contained in sections 1–4, 201–205, 214, 218–220, 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, and § 1.108 of the Commission's rules, this Order is adopted.

List of Subjects

47 CFR Part 36

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–32927 Filed 12–26–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 001025298–0349–02; I.D. 101000C]

RIN 0648-AO56

Fisheries of the Northeastern United States; Summer Flounder, Scup, Black Sea Bass, Atlantic Mackerel, Squid and Butterfish Fisheries; Modification of Scup Gear Restricted Areas (GRAs) and Exemptions to the GRAs, and Modifications to the Landing Limits in the Atlantic Mackerel, Squid, and Butterfish Fisheries

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to modify the GRAs that were established in the Mid-Atlantic Bight to reduce scup bycatch in small-mesh fisheries; exempt Atlantic mackerel fishing from all of the GRA restrictions and Loligo squid fishing from the November 1 through December 31, 2000, GRA restrictions; modify the procedure and criteria for exempting small-mesh fisheries from the requirements of the GRAs; and modify the landing limits in the Atlantic mackerel, squid and butterfish fisheries. The modification of the GRAs is intended to reduce negative economic impacts on the small-mesh fishing industry, while still ensuring that scup bycatch in small-mesh fisheries is reduced. The modification of the procedure for exempting small-mesh fisheries from the requirements of the GRAs is intended to address problems with the current method of determining exemptions. The modification of the landing limits in the Atlantic mackerel, squid and butterfish fisheries is necessary to discourage directed fishing after the closure of the directed fisheries.

DATES: Effective December 23, 2000, except for amendments in §§ 648.14(a)(73), 648.14(p)(3) and (p)(4), 648.22(c), and 648.122(e), which are effective January 26, 2001.

ADDRESSES: Copies of the Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA) and Final Regulatory Flexibility Analysis (FRFA) contained within the RIR, and the Environmental Assessment (EA) are available from the Northeast Regional Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298. The EA/RIR/FRFA is also accessible via the Internet at *http:/www.nero.gov/ro/doc/nr.htm*.

Send comments on any ambiguity or unnecessary complexity arising from the language used in this final rule to the Northeast Regional Office at the same address.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fishery Policy Analyst, at 978-281-9279.

SUPPLEMENTARY INFORMATION: A proposed rule for this action was published in the **Federal Register** on November 2, 2000 (65 FR 65818). The comment period closed on November 17, 2000.

Revised GRAs and Exemptions

The GRA measures contained in this final rule are unchanged from those in the proposed rule. A complete discussion of background issues that led to the development of these measures is contained in the preamble to the proposed rule and is not repeated here. The coordinates and time periods of the modified GRAs are listed below. Copies of a chart depicting the areas appear in the EA/RIR/IRFA/FRFA and are available from the Administrator, Northeast Region, NMFS (Regional Administrator) upon request (see **ADDRESSES**). This final rule exempts Atlantic mackerel from the minimum mesh-size requirements in all of the GRAs and exempts the Loligo squid fishery from the minimum mesh-size requirements in the GRAs from November 1 through December 31, 2000.

NORTHERN GEAR RESTRICTED AREA I (NOVEMBER 1 THROUGH DECEMBER 31)

Point	N. lat.	W. long.
NGA 1	41° 00″	71° 00″
NGA 2	41° 00″	71° 30″
NGA 3	40° 00″	72° 40″
NGA 4	40° 00″	72° 05″
NGA 1	41° 00″	71° 00″

NORTHERN GEAR RESTRICTED AREA II (DECEMBER 1 THROUGH JANUARY 31)

Point	N. lat.	W. long.
NGA 6	40° 00″	71° 40″
NGA 7	40° 00″	72° 10″
NGA 8	39° 00″	73° 09″
NGA 9	39° 00″	72° 50″
NGA 6	40° 00″	71° 40″

SOUTHERN GEAR RESTRICTED AREA (JANUARY 1 THROUGH APRIL 30)

Point	N. lat.	W. long.
SGA 1	39° 00″	72° 50″
SGA 2	39° 11″	72° 58″
SGA 3	38° 00″	74° 05″
SGA 4	38° 00″	73° 57″
SGA 1	39° 00″	72° 50″

Procedures for Establishing Exemptions

NMFS is also modifying the procedures for establishing exemptions to the GRAs. The current regulations specify that a fishery may be exempted from the GRAs if the Regional Administrator, in consultation with the Mid-Atlantic Fishery Management Council (Council), determines that scup caught as bycatch in small-mesh fisheries is less than 10 percent, by weight, of the total catch and that the exemption will not jeopardize achievement of the fishing mortality objectives for scup. This final rule revises the procedures by instead authorizing the Council to recommend exemptions for species other than scup to the Regional Administrator through the framework adjustment process in the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP). This procedure provides for greater public participation through the Council process and requires supporting rationale for any exemption.

Modification of Landing Limits

NMFS is also modifying the regulations pertaining to landings limits specified for Atlantic mackerel, squid, and butterfish, as recommended by the Council at its August 2000 meeting. When the directed fisheries for these species are closed, vessels with appropriate fishing permits are allowed to land an allowance of incidentally harvested fish. This action limits the use of the allowance to once each calendar day and redefines the incidental allowance as a possession limit rather than as a landing limit to enhance at-sea enforcement. A complete discussion of this measure appears in the preamble to the proposed rule and is not repeated here.

Comments and Responses

There were 110 written comments submitted in response to the proposed rule during the comment period. Most of the comments were submitted by commercial fishing industry members. Several conservation groups also submitted a co-signed comment. Other comments were received from the New England Fishery Management Council (NEFMC), the Massachusetts Division of Marine Fisheries (MADMF), the Town of East Hampton, NY, and the Fifth Coast Guard District Office of Law Enforcement. NMFS considered all comments received during the comment period in making the decision to issue this final rule and responds to these comments here.

Comment 1: One hundred and six commenters supported immediate adoption of the proposed modifications to the GRAs. Several noted that, although they support the proposed GRA modifications in the short term, they oppose GRAs as a long-term solution for reducing scup discards. These commenters encouraged NMFS to consider current industry efforts to conduct experimental work that may lead to fishing and gear modifications to reduce scup discards.

Response: This final rule implements the proposed modifications to the GRAs. Other options for reducing scup discards will be considered in conjunction with the proposed 2001 specifications for the fishery (65 FR 71042, November 28, 2000). Other measures, such as gear modifications to reduce scup discards, will be considered by the Council and NMFS once there is sufficient scientific research to assess their effectiveness.

Comment 2: Two commenters opposed the proposed modification of the GRAs. They were concerned that this would reduce the effectiveness of the GRAs and significantly increase scup discards because the smaller GRAs would be difficult to enforce and because they do not account for annual changes in scup migration and for the displacement of fishing effort to adjacent areas of potentially high scup bycatch. Both questioned the reliability of the available sea sampling (observer) data, which indicate that the proposed GRA modification would not significantly increase scup discards.

Response: The Council's Scup Monitoring Committee (Scup MC) reviewed the available sea sampling data and the analysis comparing the discard reductions associated with the current GRAs to those of the proposed GRAs. The Scup MC recommended that NMFS adopt the modifications as contained in the proposed rule. NMFS acknowledges that the sea sampling data upon which the analysis is based are limited. However, the same limited data were used to establish the current GRAs, which these commenters supported. These data constitute the best scientific information available. NMFS believes that, even with the acknowledged limitations, there is sufficient rationale to adopt the modified GRAs because they are estimated to offer significant scup discard reductions with a considerably smaller negative economic impact on industry than on the existing GRAs. The potential displacement of fishing effort to adjacent areas was considered, but its magnitude cannot be estimated. The U.S. Coast Guard has indicated that the geographic configuration, size, and time periods of the modified GRAs are enforceable and that they can provide adequate surveillance to detect the majority of fishing vessels operating in the areas.

Comment 3: One hundred and six commenters supported the proposed exemption from the GRA restrictions for the Atlantic mackerel small-mesh fishery, and 105 commenters supported the temporary exemption of the Loligo squid small-mesh fishery.

Response: This final rule implements the proposed exemptions.

Comment 4: Two commenters opposed the proposed exemption for the Atlantic mackerel small-mesh fishery and the temporary exemption of the Loligo squid small-mesh fishery. They expressed concern that the proposed exemptions could significantly increase scup discards. One commenter questioned why NMFS apparently provided lower scup bycatch estimates for the Atlantic mackerel fishery in the proposed rule for this action than in the final specifications for the 2000 fishery without explaining the basis for this change. The commenter also objected to the methodology used for calculating scup bycatch in the mackerel fishery, which divided total scup catch by total catch of all species caught on directed mackerel trips (with ≥ 50 percent mackerel catch). The commenter stated that this methodology disguises significant scup bycatch. Both

commenters also expressed concern that the temporary Loligo squid small-mesh exemption could be interpreted as a precursor for a permanent exemption.

Response: NMFS believes that it is appropriate to calculate scup bycatch by comparing scup catch to total fish catch. This method is also used to determine exemptions in other Northeast Region fisheries. Using this method, the highest percentage of scup bycatch for any observed directed mackerel trip was 6.3 percent, based upon an updated analysis of the sea sampling database from 1989 through 2000. The average percentage of scup bycatch for all observed directed mackerel trips was 0.39 percent. On the basis of this information (observed trips), it does not appear that the directed mackerel small-mesh fishery jeopardizes the attainment of scup mortality objectives. Therefore, the Scup MC recommended that the Atlantic mackerel small-mesh fishery be exempt from the GRA restrictions. NMFS supports the Scup MC's recommendation to exempt the Atlantic mackerel small-mesh fishery. However, NMFS also recognizes the problems associated with using a threshold criterion to exempt fisheries that, although they have overall low percentages of scup bycatch, have occasionally large scup discards in single tows. To better consider the impacts of such fisheries on scup discard mortality, NMFS is changing the procedures for establishing exemptions to remove the 10-percent threshold criterion for exemption, as discussed in the response to Comment 5.

The discrepancy between the bycatch estimates in the 2000 specifications and the proposed rule for this action is attributable to two factors: Differences in the methodologies used by the Council and NMFS to calculate bycatch, and the addition of sea sampling data from trips conducted in 2000. As mentioned, NMFS calculates scup bycatch by comparing the scup catch to the total catch. In the EA for the 2000 scup specifications, the Council calculated scup bycatch by comparing the scup discards to the total scup catch. The Council's methodology resulted in a higher percentage estimate of scup discards than NMFS'.

The temporary exemption for the *Loligo* squid small-mesh fishery is not expected to increase scup discards significantly because the directed *Loligo* fishery is closed for the period of the exemption (through December 31, 2000). The exemption will allow vessels in the GRAs to retain up to 2,500 lb (1,134 kg) of *Loligo* squid caught incidentally while participating in other exempt fisheries per trip. The *Loligo* exemption will be reconsidered in conjunction with the proposed 2001 specifications for the fishery. A permanent exemption of the *Loligo* fishery would have to be based on an assumption that directed fishing for *Loligo* will occur and would require a sufficient factual justification.

Comment 5: NMFS received many comments in support of the proposed change to the procedures for establishing exemptions to the GRAs. However, these same commenters and several others objected to removal of the 10-percent bycatch threshold currently used to establish exemptions to the GRA restrictions. These commenters believe that precise, quantifiable bycatch criteria are needed as a threshold to evaluate proposals requesting exemptions.

Response: NMFS believes that the use of a quantified standard alone is not appropriate for determining exemptions in these fisheries, given the limited data. Observer data for small-mesh trips, which are the best available discard information, are not available for all areas and time periods of concern. This makes precise characterization of discards difficult. The discard information from observed trips also indicates that these fisheries may have significant scup bycatch on some trips, which could be masked by considering only the overall percentage of scup bycatch. This catch pattern correlates with anecdotal information identifying at least some of the small-mesh fisheries as primary sources of scup discards. These regulations change the current procedure used to establish exemptions by delegating that authority to the Council. The Council, by using the framework adjustment process will allow for full public discussion of the issues, an analysis of impacts, thorough Council deliberation, and sound justification to support any proposed exemptions to the GRA restrictions.

Comment 6: NMFS received one comment in support of the measure that will allow only one landing of incidental catch allowances in the squid, mackerel and butterfish fisheries per calendar day.

Response: This final rule implements this measure.

Changes From the Proposed Rule

In § 648.22(c) the word "possess" was added to clarify the fact that the incidental allowance is a possession restriction.

In § 648.14, paragraph (p)(4) is retained to reflect that the possibility exists that there may be a total closure of a fishery; and the word "possess" is added to clarify the fact that the closure is an absolute prohibition.

The designation of the points in the GRAs is changed to reflect that they represent discrete enclosed areas.

No other changes were made from the proposed rule.

Classification

NMFS prepared an FRFA for this action. A copy of the FRFA is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows:

A description of the reasons why action by the agency is being taken and the objectives of this final rule are explained in the preambles to the proposed rule and final rule and are not repeated here. This action does not contain any collection of information, reporting, or recordkeeping requirements. It does not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and regulations at 50 CFR part 648. There are no compliance costs associated with this final rule.

One hundred and ten comments were received on the measures contained in the proposed rule, but none were in response to the initial regulatory flexibility analysis on impacts of these measures on small entities. NMFS has responded to comments received on the proposed rule in the preamble of this final rule. No substantive changes were made from the proposed rule.

The revised GRAs could impact the owners of any vessel that would otherwise have fished with small mesh in the affected area. In the analysis of the 2000 specifications for the summer flounder, scup, and black sea bass fisheries, the Council estimated that a maximum of 172 vessels (based on 1998 vessel trip report (VTR) data) would be affected by any of the proposed GRAs. This estimate was based on the largest, most restrictive GRAs considered by the Council. Although that alternative was not implemented, the upper limit of affected vessels under any alternative, including the alternative implemented in this final rule, is 172. Because the revised GRAs are smaller than the area analyzed by the Council, the number of impacted vessels is likely to be less than 172. However, it is not possible to quantify how many vessels actually will be impacted by the smaller GRAs.

Exempting mackerel from the GRAs may potentially affect any vessel possessing a mackerel permit. About 1,980 commercial vessels currently hold an Atlantic mackerel permit, based on NMFS permit file data. According to

NMFS data, 11 percent of mackerel landings (1989 - 2000), valued at $346,000 (1998 prices), were derived from the area encompassed by the GRA established by this final rule.

The *Loligo* exemption is expected to produce positive economic impacts on permitted vessels. However, it is difficult to estimate how many vessels will benefit from this exemption. Due to the distance of the GRAs from shore and the current landing limit of 2,500 lb (1,134 kg) for the *Loligo* fishery resulting from the October 25, 2000, closure of the directed fishery, NMFS believes that this measure will benefit only those vessels targeting other exempt species, such as Atlantic mackerel, and are able to retain the *Loligo* trip limit.

The best available information indicates that the modification of landing limits in the Atlantic mackerel, squid and butterfish fisheries will impact approximately 60 vessels that have reportedly made multiple daily landings, out of a total of 2,737 vessels holding one or more permits in these fisheries. Although vessels engaging in the practice of making multiple landings in one calendar day will suffer some loss in revenue as a result of the measure to prohibit this practice, the benefits of having quota available in subsequent periods, when prices are potentially higher, may offset this loss.

The modification of exemption criteria and procedures is an administrative change that is not likely to result in any economic impacts to small entities.

The alternatives implemented by this final rule are expected to minimize economic impacts on small entities while achieving the conservation goals and objectives of the FMP and the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries. The alternative to retain status quo measures was considered by the Council, but those measures were determined to result in greater negative economic impacts than the alternative measures that are implemented through this final rule. The economic impacts of the status quo measures were compared to the impacts of the measures enacted by this final rule in the classification section of the proposed rule.

The Council and NMFS concluded that the alternative to modify the configuration of the GRAs, as implemented by this final rule, was preferable to the status quo alternative because it provided substantial economic relief to small entities participating in the small-mesh fisheries in this area while still achieving significant conservation benefits, consistent with the objectives of the FMP. NMFS believes that the configuration of the modified GRAs is based upon the best available information. While other modifications to the GRAs could possibly further reduce negative economic impacts on small entities, the existing data are not sufficient to clearly suggest another alternative that would still achieve the conservation benefits necessary to be consistent with the FMP and with the Magnuson-Stevens Act.

Similarly, existing data indicate that exempting Atlantic mackerel and *Loligo* squid fisheries from the GRA restrictions is justified. This alternative, relative to the status quo alternative of no exemptions, provides economic relief to participants in these small-mesh fisheries who will fish in the GRAs, with relatively little negative impact on the scup resource. However, the available data on the *Loligo* small-mesh fishery are less convincing in this regard than are those for the mackerel fishery. Therefore, this rule exempts the *Loligo* fishery only through December 31, 2000. While exempting the *Loligo* fishery for a longer term would likely provide greater economic benefits to small entities, at least in the short term, such an exemption could result in unacceptably high discard mortality of scup, which would prevent scup from rebuilding as required under the Magnuson-Stevens Act and which could compromise the longer-term health of that fishery.

As additional information on scup discards in small-mesh fisheries in the Mid-Atlantic Bight becomes available, NMFS anticipates that the Council will re-evaluate the GRAs and related management measures. The proposed specifications for the 2001 fisheries for summer flounder, scup, and black sea bass contain additional alternatives that are being considered for the scup fishery.

The revision of the trip limits for the Atlantic mackerel, squid, and butterfish fisheries to prevent multiple landings in a single calendar day will impact a limited number of small entities. However, the status quo alternative has resulted in an unanticipated windfall for those fishermen who are located close enough to concentrations of *Loligo*, in particular, to make multiple landings in a day. Because these landings occur after the directed fishery has been closed but are still counted against the period's quota, the status quo alternative can result in quota overages, which must be deducted from the quota of a future period. This can cause unintended allocational impacts both geographically and among boat-size sectors of the fishery. There is also the possibility that quota overages could be large enough to negatively impact the resource. The selected alternative prevents these problems and helps ensure fair access to these resources by small entities throughout the range and temporal extent of these fisheries.

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

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule. Such comments should be sent to the Regional Administrator (see **ADDRESSES**).

The provisions of this final rule that modify the existing GRAs and exempt the Atlantic mackerel and *Loligo* squid fisheries relieve a restriction and, under 5 U.S.C. 553(d)(1), are not subject to a 30-day delay in effective date.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 20, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.14, paragraphs (a)(73), (a)(122), (a)(123), (p)(3), and (p)(4) are revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(73) Take, retain, possess, or land more mackerel, squid or butterfish than specified under a notification issued under § 648.22.

* * * * *

(122) Effective January 1, 2001, fish for, possess or land *Loligo* squid, silver hake, or black sea bass in or from the areas and during the time periods, described in § 648.122(a), (b), or (c) while in possession of midwater trawl or other trawl nets or netting that do not meet the minimum mesh-size restrictions or that are modified, obstructed or constricted, if subject to the minimum mesh-size requirements specified in §§ 648.122 and 648.123(a), unless the nets or netting are stowed in accordance with § 648.23(b).

(123) Effective December 27, 2000 through December 31, 2000, fish for, possess or land silver hake or black sea bass in or from the areas, and during the time periods described in § 648.122(a), (b), or (c) while in possession of midwater trawl or other trawl nets or netting that do not meet the minimum mesh-size restrictions or that are modified, obstructed or constricted, if subject to the minimum mesh-size requirements specified in §§ 648.122 and 648.123(a), unless the nets or netting are stowed in accordance with § 648.23(b).

* * * * *

(p) * * *

(3) Take, retain, possess, or land mackerel, squid or butterfish in excess of a possession allowance specified under § 648.22.

(4) Take, retain, possess, or land mackerel, squid or butterfish after a total closure specified under § 648.22.

* * * * *

3. In § 648.22, paragraph (c) is revised to read as follows:

§ 648.22 Closure of the fishery.

* * * * *

(c) *Incidental catches.* During the closure of the directed fishery for mackerel, the possession limit for mackerel is 10 percent by weight of the total amount of fish on board. During a period of closure of the directed fishery for Loligo, Illex, or butterfish, the possession limit for Loligo and butterfish is 2,500 lb (1.13 mt) each, and the possession limit for Illex is 5,000 lb (2.27 mt). Vessels may not land more than these limits during any single calendar day, which is defined as the 24-hour period beginning at 0001 hours and ending at 2400 hours.

4. In § 648.122, paragraph (e) is redesignated as paragraph (f); paragraphs (a), (b), (c), and (d) are revised; and a new paragraph (e) is added as follows:

§ 648.122 Season and area restrictions.

(a) *Southern Gear Restricted Area.* (1) From January 1 through April 30, all trawl vessels in the Southern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (a)(2) of this section, must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or for codends with fewer than 75 meshes, the minimum mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the headrope, excluding any turtle excluder device extension, unless otherwise specified in this section. The Southern Gear Restricted Area is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

SOUTHERN GEAR RESTRICTED AREA

Point	N. lat.	W. long.
SGA 1	39° 00″	72° 50″
SGA 2	39° 11″	72° 58″
SGA 3	38° 00″	74° 05″
SGA 4	38° 00″	73° 57″
SGA 1	39° 00″	72° 50″

(2) *Non-exempt species.* Unless otherwise specified in paragraph (d) of this section, the restrictions specified in paragraph (a)(1) of this section apply to vessels in the Southern Gear Restricted Area that are fishing for or in possession of the following non-exempt species: Black sea bass, Loligo squid, and silver hake (whiting). Vessels fishing for or in possession of all other species of fish and shellfish are exempt from these restrictions.

(b) *Northern Gear Restricted Area I.* (1) From November 1 through December 31, all trawl vessels in the Northern Gear Restricted Area I that fish for or possess non-exempt species as specified in paragraph (b)(2) of this section must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or for codends with fewer than 75 meshes, the minimum mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the headrope, excluding any turtle excluder device extension, unless otherwise specified in this section. The Northern Gear Restricted Area I is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

NORTHERN GEAR RESTRICTED AREA I

Point	N. lat.	W. long.
NGA 1	41° 00″	71° 00″
NGA 2	41° 00″	71° 30″
NGA 3	40° 00″	72° 40″
NGA 4	40° 00″	72° 05″
NGA 1	41° 00″	71° 00″

(2) *Non-exempt species.* Unless otherwise specified in paragraphs (b)(3) and (d) of this section, the restrictions specified in paragraph (b)(1) of this section apply to vessels in the Northern Gear Restricted Area I that are fishing for, or in possession of, the following non-exempt species: Black sea bass, *Loligo* squid, and silver hake (whiting). Vessels fishing for or in possession of all other species of fish and shellfish are exempt from these restrictions.

(3) *Temporarily Exempted Species.* From November 1, 2000 through December 31, 2000, the restrictions specified in paragraph (b)(1) of this section do not apply to vessels in the Northern G ear Restricted Area I that are fishing for, or in possession of *Loligo* squid.

(c) *Northern Gear Restricted Area II.* (1) From December 1 through January 31, all trawl vessels in the Northern Gear Restricted Area II that fish for or possess non-exempt species as specified in paragraph (c)(2) of this section must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or for codends with fewer than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the headrope, excluding any turtle excluder device extension, unless otherwise specified in this section. The Northern Gear Restricted Area II is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

NORTHERN GEAR RESTRICTED AREA II

Point	N. lat.	W. long.
NGA 6	40° 00″	71° 40″
NGA 7	40° 00″	72° 10″
NGA 8	39° 00″	73° 09″
NGA 9	39° 00″	72° 50″
NGA 6	40° 00″	71° 40″

(2) *Non-exempt species.* Unless otherwise specified in paragraphs (c)(3) and (d) of this section, the restrictions specified in paragraph (c)(1) of this section apply to vessels in the Northern Gear Restricted Area II that are fishing for, or in possession of, the following non-exempt species: Black sea bass, *Loligo* squid, and silver hake (whiting). Vessels fishing for or in possession of all other species of fish and shellfish are exempt from these restrictions.

(3) *Temporarily Exempted Species.* From December 1, 2000 through December 31, 2000, the restrictions specified in paragraph (c)(1) of this section do not apply to vessels in the Northern Gear Restricted Area II that are fishing for, or in possession of *Loligo* squid.

(d) *Transiting.* Vessels that are subject to the provisions of the Southern and Northern GRAs, as specified in paragraphs (a), (b), and (c) of this section may transit these areas provided that trawl net codends on board of mesh size less than that specified in paragraphs (a), (b), and (c) of this section are not available for immediate use and are stowed in accordance with the provisions of § 648.23(b).

(e) *Addition or deletion of exemptions.* The MAFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.108(a), additions or deletions to exemptions for fisheries other than scup. A fishery may be restricted or exempted by area, gear, season, or other means determined to be appropriate to reduce bycatch of scup.

* * * * *

[FR Doc. 00–32956 Filed 12–21–00; 4:33 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 001215358-0358-01; 113000A]

RIN 0648-AN78

Fisheries off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Annual Specifications

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

ACTION: Final harvest guideline.

SUMMARY: NMFS announces the annual harvest guideline for Pacific sardine in the exclusive economic zone off the Pacific coast for the January 1, 2001, through December 31, 2001, fishing season. This harvest guideline has been calculated according to the regulations implementing the Coastal Pelagic Species Fishery Management Plan (FMP). The intended effect of this action is to establish allowable harvest levels for Pacific sardine off the Pacific coast.

DATES: Effective January 1, 2001, through December 31, 2001.

ADDRESSES: The report Stock Assessment of Pacific Sardine with Management Recommendations for 2001 is available from Rebecca Lent, Administrator, Southwest Region, (Regional Administrator), NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Southwest Region, NMFS, 562-980-4036.

SUPPLEMENTARY INFORMATION: The FMP divides managed species into two categories: actively managed and monitored. Harvest guidelines for actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Harvest guidelines for monitored species (jack mackerel, northern anchovy, and market squid), which are underutilized or under the jurisdiction of the State of California, are not based on current biomass estimates, although a constant allowable biological catch (ABC) for each species is based on the long-term yield of each species.

At a public meeting each year, the biomass for each actively managed species is presented at a public meeting held by the Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (Team). At that time, the biomass, the harvest guideline, and the status of the fishery is reviewed. Following review and recommendations by the Council and after hearing all public comments, NMFS publishes the annual harvest guideline in the **Federal Register** before the beginning of the fishing season.

On October 17, 2000, in accordance with the procedures of the FMP, the biomass report and harvest guideline for Pacific sardine were reviewed at a public meeting of the Team at the offices of the Southwest Region in Long Beach, California. A public meeting between the Team and the Council's CPS Advisory Subpanel (Subpanel) was held the following day. The Council reviewed the report at its meeting of November 2, 2000, and heard comments from its advisory bodies and the public. No significant comments on the biomass estimate were received; therefore, the Council recommended to NMFS that the biomass and harvest guideline be announced.

The sardine population was estimated using a modified version of the integrated stock assessment model called Catch at Age Analysis of Sardine–Two Area Model (CANSAR–TAM). CANSAR–TAM is a forward-casting, age-structured analysis using fishery dependent and fishery independent data to obtain annual estimates of sardine abundance, year-class strength, and age-specific fishing mortality for 1983 through 2000. The modification of CANSAR–TAM was developed to account for the expansion of the Pacific sardine stock northward to include waters off the northwest Pacific coast. Documentation of the 2000 estimate is described in Stock Assessment of Pacific Sardine with Management Recommendations for 2001 (see **ADDRESSES**).

The formula in the FMP uses the following factors to determine the harvest guideline:

1. The biomass of age one sardine and above. For 2000, this estimate is 1,182,465 metric tons (mt).

2. The cutoff. This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 150,000 mt.

3. The portion of the sardine biomass that is in U.S. waters. For 2000, this estimate is 87 percent, based on the average of larval distribution obtained from scientific cruises and the distribution of the resource obtained from logbooks of fish-spotters.

4. The harvest fraction. This is the percentage of the biomass above 150,000 mt that may be harvested. The fraction used varies (5-15 percent) with current ocean temperatures. A higher fraction is used for warmer ocean temperatures, which favor the production of Pacific sardine, and a lower fraction is used for cooler temperatures. For 2000, the fraction was 15 percent based on three seasons of sea surface temperature at Scripps Pier, California.

Based on the estimated biomass of 1,182,465 mt and the formula in the FMP, a harvest guideline of 134,737 mt was calculated for the fishery beginning January 1, 2001. The harvest guideline is allocated one-third for Subarea A, which is north of 35° 40' N. lat. (Pt. Piedras Blancas, CA) to the Canadian border, and two-thirds for Subarea B, which is south of 35° 40' N. lat. to the Mexican border. Any unused resource in either area will be reallocated between areas to help ensure that the optimum yield will be achieved. The northern allocation is 44,912 mt; the southern allocation is 89,825 mt.

Classification

This action is authorized by 50 CFR 660.509 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA) finds for good cause under 5 U.S.C. 553(b)(B) that providing prior notice and an opportunity for public comment on this action is unnecessary because

establishing the harvest guideline is an ministerial act, determined by applying formulas in the FMP. During the comment periods for Amendment 8 to the CPS FMP and its proposed rule, the public was given an opportunity to comment on these formulas.

Because this final rule merely announces the result of harvest guideline calculations and does not require any participants in the fishery to take action or to come into compliance, the AA finds for good cause under 5 U.S.C. 553(d)(3) that delaying the effective date of this final rule for 30 days is unnecessary.

Because prior notice and opportunity for public comment are not required for this action by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are not applicable.

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

Dated: December 20, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–33005 Filed 12–26–00; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 65, No. 249
Wednesday, December 27, 2000

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 HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1701

RIN 2550–AA15

Assessments

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Proposed regulation.

SUMMARY: The Office of Federal Housing Enterprise Oversight is proposing a regulation setting forth its policy and procedures with respect to the annual assessment of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation as provided by statute.

DATES: Written comments on the proposed regulation must be received by January 26, 2001.

ADDRESSES: Send written comments concerning the proposed regulation to Alfred M. Pollard, General Counsel, Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. Written comments may also be sent to Mr. Pollard by electronic mail at RegComments@OFHEO.gov. OFHEO requests that written comments submitted in hard copy also be accompanied by the electronic version in MS Word © or in portable document format (PDF) on 3.5″ disk.

FOR FURTHER INFORMATION CONTACT: Isabella W. Sammons, Associate General Counsel, telephone (202) 414–3790, (not a toll-free number), Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Comments

OFHEO requests comments from the public and will take all comments into consideration before issuing the final regulation. Copies of all comments will be posted on the OFHEO Internet web site at *http://www.ofheo.gov*. In addition, copies of all comments received will be available for examination by the public at the Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

Background

Title XIII of the Housing and Community Development Act of 1992, Pub.L. No. 102–550, entitled the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Act), established OFHEO as an independent office within the Department of Housing and Urban Development to ensure that the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) are capitalized adequately and operate safely and in compliance with applicable laws, rules and regulations.

Section 1316 of the Act (12 U.S.C. 4516) provides that OFHEO may establish and collect annual assessments from the Enterprises. OFHEO has been assessing the Enterprises pursuant to section 1316 and proposes to set forth its policies and procedures with respect to such assessments in the proposed regulation.

Section-by-Section Analysis

Section 1701.1 Purpose

This section states that the purpose of the proposed regulation is to set forth the policy and procedures of OFHEO with respect to the annual assessments of the Enterprises under section 1316 of the Act. The Act provides for an initial annual assessment for the startup costs of OFHEO; however, since the initial annual assessment has been collected and OFHEO no longer has start up costs, the initial annual assessment is not addressed in the proposed regulation.

Section 1701.2 Definitions

Section 1701.2 sets forth the definition of terms used in the proposed regulation.

The term "Act" is defined to mean the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Title XIII of the Housing and Community Development Act of 1992, Pub.L. No. 102–550, § 1301, Oct. 28, 1992, 106 Stat. 3672, 3941–4012 (1993).

The term "adequately capitalized" is defined to mean the adequately capitalized capital classification under section 1364 of the Act (12 U.S.C. 4614). It is used in proposed § 1701.4.

The term "Director" is defined to mean the Director of the Office of Federal Housing Enterprise Oversight or his or her designee. The Director may delegate his or her authority under section 1316 of the Act to officers or employees of OFHEO.

The term "Enterprise" is defined to mean the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

The term "surplus funds" is defined to mean funds, which were collected from an Enterprise in connection with an annual assessment, that are unobligated as of September 30 of each fiscal year. Appropriated funds of OFHEO are available for obligation and expenditure for an indefinite period without fiscal year limitation. Notably, section 1316(d) of the Act (12 U.S.C. 4516(d)) requires the crediting of surplus funds that are "unobligated at the end of the year for which the assessment was collected." Any unobligated funds remaining as of September 30, regardless when they were collected, should be treated as surplus funds and credited to the annual assessment.

The term "total assets" is used in § 1701.3(b) of the proposed regulation in connection with the calculation of the proportional amount of the annual assessment of each Enterprise. The definition of the term "total assets" is broader than the definition of the term "total assets" in section 1316(b)(3) of the Act (12 U.S.C. 4516(b)(3)) in that it lists the types of other off-balance sheet assets to be used in the calculation of total assets. The assets used to calculate total assets for purposes of the annual assessment are the same as the assets used to calculate the minimum capital level of an Enterprise under 12 CFR part 1750, subpart A. The proposed regulation defines the term as the sum, as of the June quarterly minimum capital report of the Enterprise under 12 CFR part 1750, subpart A, of the on-balance-sheet-assets, as adjusted in the June quarterly minimum capital report under 12 CFR part 1750, subpart A; the unpaid principal balance of outstanding

mortgage-backed securities issued or guaranteed by the Enterprise that are not included in on-balance-sheet assets; one-half of the average dollar amount of commitments outstanding each quarter over the preceding four quarters; the sum of the credit-equivalent amounts for interest rate contracts; the unpaid principal balance of other guaranteed obligations, such as multifamily credit enhancements; other guaranteed amounts, such as sold portfolio remittances pending; and other off-balance-sheet obligations, as determined by the Director.

The term "OFHEO" is defined to mean the Office of Federal Housing Enterprise Oversight.

Section 1701.3 Annual Assessments

Paragraph (a) of proposed § 1701.3 sets forth the authority of the Director to establish and collect assessments under section 1316(a) of the Act (12 U.S.C. 4516(a)). As provided in section 1316(a) and (f) of the Act (12 U.S.C. 4516(a) and (f)), the proposed regulation provides that the Director may, to the extent provided in appropriation acts, establish and collect from the Enterprises an annual assessment for each fiscal year. It further indicates that the amount of the annual assessment shall not exceed the estimated amount to be sufficient to provide for the necessary administrative and non-administrative expenses to carry out the responsibilities of the director relating to the Enterprises and to carry out the purposes of the Act.

Paragraph (b) of proposed § 1701.3 reiterates the statutory formula in section 1316(b) of the Act (12 U.S.C. 4516(b)) for determining how the annual assessment is to be allocated between the Enterprises. The allocation for each Enterprise is the proportion of the annual assessment that bears the same ratio to the total annual assessment as the total assets of each Enterprise bears to the total assets of both Enterprises. The term "total assets" is defined in proposed § 1701.2.

Section 1316(b)(2) of the Act (12 U.S.C. 4516(b)(2)) requires the Enterprises to pay their proportional share of the annual assessment in semiannual payments on or before October 1 and April 1 of each fiscal year. Paragraph (c)(1) of proposed § 1701.3 restates this requirement and clarifies that one-half of the proportional share of the annual assessment is to be paid in each semiannual payment.

Paragraph (c)(2) of proposed § 1701.3 also explains how the semiannual payments are to be handled in the event OFHEO does not have a regular appropriation as of October 1 of any year. When legislative action on a regular appropriation bill is not completed before the beginning of a fiscal year, a continuing appropriation (also called a continuing resolution) may be enacted to provide funding for the affected agencies until their regular appropriations are enacted. In such a situation, each Enterprise is to pay, by such date as determined by the Director, an amount that is determined by applying the annual assessment proportion calculated pursuant to paragraph (b) of proposed § 1701.3 to the amount authorized by the Office of Management and Budget (OMB). After OFHEO receives a regular appropriation, the amount of the proportional share of the annual assessment collected from each Enterprise is to be reduced by the partial payments made by each Enterprise in connection with any continuing appropriations. In the event there is no continuing appropriation as of October 1 of any fiscal year, OFHEO would continue to operate if authorized by OMB to use funds remaining from the prior fiscal year assessment.

Paragraph (d) of proposed § 1701.3 provides that the annual assessment is to be credited by the amount of any surplus funds, a requirement which is set forth in section 1316(d) of the Act (12 U.S.C. 4516(d)). Paragraph (d) also provides that surplus funds are to be allocated in the same proportion in which they were collected, except as determined by the Director. The term "surplus funds" is defined in proposed § 1701.2.

Section 1701.4 Increase in Semiannual Payments

Proposed § 1701.4 sets forth the authority of the Director under section 1316(c) of the Act (12 U.S.C. 4516(c)) to provide for an increase in the semi-annual payments made by an Enterprise that is not classified as "adequately capitalized," as that term is defined in proposed § 1701.2. The funds collected under this provision are to be deposited in the Federal Housing Enterprise Oversight Fund, but are not to be considered funds appropriated by Congress.

Section 1701.5 Notice and Review

Paragraph (a) of proposed § 1701.5 codifies the OHFEO practice of providing the Enterprises with written notice of the annual assessment, semiannual payments, any partial payments, and any changes in the assessment procedures.

Paragraph (b) of proposed § 1701.5 provides that, at the written request of an Enterprise, the Director, in his or her discretion, may review the calculation of the Enterprise's proportional share of the assessment, semiannual payments or partial payments. The determination of the Director is final. Review by the Director does not suspend the obligation of the Enterprise to make the semiannual payment or partial payment on or before the date it is due, except as provided by the Director.

Section 1701.6 Delinquent Payments

This section of the proposed regulation reiterates the statutory requirements with respect to the assessment of interest and penalties on delinquent payments. It provides that the Director may assess interest and penalties on delinquent payments of any assessment under this part in accordance with 31 U.S.C. 3717 (interest and penalties on claims) and 12 CFR part 1704 (debt collection). The Director may waive interest and penalties in his or her discretion. Any interest and penalties collected under this section are to be transferred to the general fund of the Treasury of the United States.

Section 1701.7 Enforcement of Payment

Proposed § 1701.7 provides that notwithstanding § 1701.6, the Director may enforce the payment of assessments pursuant to the authority of section 1371 (12 U.S.C. 4631) (cease-and-desist proceedings); section 1372 (12 U.S.C. 4632) (temporary cease-and-desist orders), and section 1376 (12 U.S.C. 4636) (civil money penalties) of the Act. These sections authorize the Director to take enforcement actions for violations of any provisions of the Act.

Section 1701.8 Deposit in Fund

As provided in 1316(f) of the Act (12 U.S.C. 4516(f)), this section of the proposed regulation would require that OFHEO deposit any assessments collected under this part in the Federal Housing Enterprise Oversight Fund established in the Treasury of the United States.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

The proposed regulation is not classified as a significant rule under Executive Order 12866 because it will not result in an annual effect on the economy of $100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the

ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required and this proposed regulation has not been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of the proposed regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the proposed regulation, if adopted, is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1701

Government Sponsored Enterprises, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, OFHEO proposes to add 12 CFR part 1701 as follows:

PART 1701—ASSESSMENTS

Sec.

Authority: 12 U.S.C. 4516.

§ 1701.1 Purpose.

This part sets forth the policy and procedures of OFHEO with respect to the establishment and collection of the annual assessments of the Enterprises under section 1316 of the Act.

§ 1701.2 Definitions.

For purposes of this part, the term—

(a) *Act* means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Title XIII of the Housing and Community Development Act of 1992, Pub.L. No. 102–550, § 1301, Oct. 28, 1992, 106 Stat. 3672, 3941–4012 (1993).

(b) *Adequately capitalized* means the adequately capitalized for purposes of the capital classification under section 1364 of the Act (12 U.S.C. 4614).

(c) *Director* means the Director of the Office of Federal Housing Enterprise Oversight or his or her delegate.

(d) *Enterprise* means the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(e) *Surplus funds* means the funds from any annual assessment collected from an Enterprise that are not obligated as of September 30 of each fiscal year.

(f)(1) *Total assets* means the sum, as of the June quarterly minimum capital report of the Enterprise under 12 CFR part 1750, subpart A, of:

(i) On-balance-sheet assets, as adjusted in the June quarterly minimum capital report of the Enterprise under 12 CFR part 1750, subpart A;

(ii) The unpaid principal balance of outstanding mortgage-backed securities issued or guaranteed by the Enterprise that are not included in on-balance-sheet assets;

(iii) One-half of the average dollar amount of commitments outstanding each quarter over the preceding four quarters;

(iv) The sum of the credit-equivalent amounts for interest rate contracts;

(v) The unpaid principal balance of other guaranteed obligations, such as multifamily credit enhancements;

(vi) Other guaranteed amounts, such as sold portfolio remittances pending; and

(vii) Other off-balance-sheet obligations as determined by the Director.

(g) *OFHEO* means the Office of Federal Housing Enterprise Oversight.

§ 1701.3 Annual assessments.

(a) *Establishment of assessment.* The Director may, to the extent provided in appropriation acts, establish and collect from the Enterprises an annual assessment for each fiscal year, as allocated under paragraph (b) of this section. The amount of the annual assessment shall not exceed the estimated amount to be sufficient to provide for the necessary administrative and non-administrative expenses to carry out the responsibilities of the Director relating to the Enterprises and to carry out the purposes of the Act.

(b) *Allocation and proportional share.* The annual assessment established under paragraph (a) of this section shall be allocated between the Enterprises. Each Enterprise shall pay a proportional share of the annual assessment that bears the same ratio to the total annual assessment as the total assets of each Enterprise bears to the total assets of both Enterprises.

(c) *Timing of payment.* (1) Each Enterprise shall pay one-half of its proportional share of the annual assessment in semiannual payments on or before October 1 and April 1 for each fiscal year, except as provided in paragraph (d) of this section and § 1701.4.

(2) If OFHEO is operating under a continuing appropriation as of October 1 of any year, each Enterprise shall pay, on such date as determined by the Director, an amount calculated by applying the annual assessment proportion calculated under paragraph (b) of this section to the amount authorized for expenditure. When OFHEO receives a regular appropriation, the amount of the allocation share of the annual assessment collected from each Enterprise shall be reduced by any partial payments made by each Enterprise in connection with any continuing appropriations.

(d) *Surplus funds.* Surplus funds shall be credited to the annual assessment by reducing the amount collected by the amount of the surplus funds. Surplus funds shall be allocated in the same proportion as they were collected, except as determined by the Director.

§ 1701.4 Increase in semiannual payments.

The Director, in his or her discretion, may increase the semiannual payment to be collected under § 1701.3 from an Enterprise that is not classified as adequately capitalized.

§ 1701.5 Notice and review.

(a) The Director shall provide each Enterprise with written notice of the annual assessment, the semiannual payments and any partial payments to be collected under this part. In addition, the Director shall provide each Enterprise with written notice of any changes in the assessment procedures that the Director, in his or her sole discretion, deems necessary under the circumstances.

(b) At the written request of an Enterprise, the Director, in his or her discretion, may review the calculation of the proportional share of the annual assessment, the semiannual payments and any partial payments to be collected under this part. The determination of the Director is final. Except as provided by the Director, review by the Director does not suspend the requirement that the Enterprise make the semiannual

payment or partial payment on or before the date it is due.

§ 1701.6 Delinquent payments.

(a) The Director may assess interest and penalties on delinquent semiannual payment or partial payments collected under this part in accordance with 31 U.S.C. 3717 (Interest and Penalty on Claims) and 12 CFR part 1704 (debt collection). The Director may waive interest and penalties in his or her discretion.

(b) Any interest and penalties collected under this section shall be transferred to the general fund of the Treasury of the United States.

§ 1701.7 Enforcement of payment.

Notwithstanding § 1701.6, the Director may enforce the payment of assessments under this part pursuant to the authorities of sections 1371 (cease-and-desist proceedings) (12 U.S.C. 4631), 1372 (12 U.S.C. 4632) (temporary cease-and-desist orders), and 1376 (12 U.S.C. 4636) (civil money penalties) of the Act.

§ 1701.8 Deposit in fund.

OFHEO shall deposit annual assessments collected under this part in the Federal Housing Enterprise Oversight Fund established in the Treasury of the United States.

Dated: December 19, 2000.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 00–32780 Filed 12–26–00; 8:45 am]

BILLING CODE 4220–01–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1770

RIN 2550—AA13

Executive Compensation

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Federal Housing Enterprise Oversight ("OFHEO") solicits comments on this proposal to adopt a regulation to clarify the procedures OFHEO employs in overseeing compensation provided by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, "the Enterprises") to their executive officers. The proposed regulation would largely formalize processes currently used by OFHEO in performing its executive compensation oversight responsibilities. The processes require the submission of relevant information by the Enterprises on a timely basis to enable OFHEO to efficiently carry out its executive compensation functions.

DATES: Written comments regarding the Notice of Proposed Rulemaking must be received on or before March 27, 2001.

ADDRESSES: Comments concerning the proposed rule should be addressed to Alfred M. Pollard, General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street NW., Fourth Floor, Washington, DC 20552. Copies of all communications received will be available for public inspection and copying at the address above. All comments will be posted on the OFHEO web site at *http://www.ofheo.gov*. OFHEO requests that written comments submitted in hard copy also be accompanied by an electronic version in MS Word© or in portable document format (PDF) on 3.5″ disk. Alternatively, comments may be submitted via electronic mail to: *RegComments@ofheo.gov*.

FOR FURTHER INFORMATION CONTACT: Christine C. Dion, Associate General Counsel, telephone (202) 414–3838 (not a toll-free number), Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Statutory Framework

Title XIII of the Housing and Community Development Act of 1992, Pub. L. 102–550, entitled the "Federal Housing Enterprises Financial Safety and Soundness Act of 1992" (the "Act"),[1] established the Office of Federal Housing Enterprise Oversight ("OFHEO") as an independent office within the Department of Housing and Urban Development. Generally, OFHEO is the safety and soundness regulator of two of the nation's largest housing-related government sponsored enterprises: the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") (collectively, the "Enterprises"). In addition to establishing OFHEO, the Act made amendments to the Enterprises' enabling statutes (collectively, the "charter acts"),[2] in part to accommodate OFHEO's statutory supervisory powers.

Included in the supervisory responsibilities of the Director of OFHEO (the "Director") is oversight of compensation provided by the Enterprises to their respective executive officers. Briefly, the Director's statutory oversight of executive compensation involves two statutory mandates: (1) the prohibition of excessive compensation, as required by the Act; and (2) the prior review of termination benefits, as required by the charter acts. Notably, the differing statutes use similar but not identical terms in delineating the standards and identifying the different comparator groups to be used in these matters.

Specifically, the Act requires the Director to prohibit the Enterprises from providing compensation to any executive officer that is not reasonable and comparable with that paid by similar businesses to executives doing similar work. Businesses used for comparison purposes include publicly held financial institutions or major financial services companies.[3]

The charter acts were amended by the Act to similarly provide that an Enterprise may only pay compensation that it determines is reasonable and comparable with compensation for employment in other similar businesses, and that the Enterprise must report annually to Congress on the comparability of the compensation policies for their employees with the compensation policies of other similar businesses.[4] The Enterprises have the general power to select the individuals who will work for them and to set their specific compensation. The Act explicitly provides that OFHEO may not prescribe or set a specific level or range of compensation for executive officers of the Enterprises.[5]

To effectuate OFHEO's charge to prohibit excessive compensation, the Act empowers OFHEO to take such actions and perform such functions as the Director determines to be necessary.[6] OFHEO may also require an Enterprise to submit reports and special reports as deemed appropriate and in such form as the Director may require.[7] Moreover, OFHEO has express statutory

[1] 12 U.S.C. 4501 *et seq.*.

[2] Federal National Mortgage Association Charter Act (12 U.S.C. 1716–1723i) and Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451–1459).

[3] Section 1318(a) (12 U.S.C. 4518(a)).

[4] Section 309(d)(2) and (3) of Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(d)(2) and (3)) and section 303(c) and (h) of Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(c) and (h)).

[5] Section 1318(b) (12 U.S.C. 4518(b)).

[6] Section 1313(8) (12 U.S.C. 4513(8)).

[7] Section 1314(a) (12 U.S.C. 4514(a)).

authority to retain any consultant that the Director determines is necessary to assist in such matters.[8] The Act also grants OFHEO a wide array of enforcement powers. Thus, without regard to the capital condition of an Enterprise, the Director can issue a notice of charges, or take such other enforcement action, for conduct violative of the compensation provisions of the Act, the charter acts or this regulation.[9] The Director can require an Enterprise, or any executive officer or member of the board of directors to correct or remedy any violation as the Director determines to be appropriate.[10]

In addition to prohibiting the payment of excessive executive compensation, OFHEO is empowered to approve individual termination packages provided by the Enterprises to their executive officers. The respective charter acts of the Enterprises were identically amended by the Act to provide that an Enterprise may not enter into an agreement or contract to provide for payment of money or other thing of current or potential value in connection with the termination of employment of an executive officer unless the agreement or contract is approved in advance by OFHEO.[11] The Act further amended the charter acts to prohibit the Director from approving termination benefits that are not comparable to such benefits provided by other businesses to executives doing similar work. Businesses used for comparison purposes include public and private entities involved in financial services and housing.

These amendments to the charter acts were effective after October 28, 1992. Therefore, agreements to provide termination payments to executives that were entered into before that date are not explicity subjected to retroactive review for approval or disapproval by OFHEO. However, the amended charter acts provide that any subsequent renegotiation, amendment or change to any such agreement entered into on or before October 28, 1992, is to be considered as entering into an agreement subject to approval by OFHEO. An extension of such an agreement is deemed to constitute a change subject to OFHEO's prior approval. OFHEO's approval is required regardless of how such an extension is structured, *e.g.*, by a written agreement or by a resolution adopted by the board of directors of the Enterprise.

The requirement that OFHEO receive and approve termination provisions before an agreement or change is effective may be met when new executive officers are hired or contracts and agreements with existing executive officers are amended if such contracts or agreements contain a provision noting that termination benefits provided under the agreements are not effective until approved by OFHEO.

The term "executive officer" for these purposes is defined to include an Enterprise's chairman of the board of directors, chief executive officer, chief financial officer, president, vice chairman and any executive vice president, as well as any senior vice president (SVP) "in charge of a principal business unit, division or function."[12] The Director has also found the term to include any individual who acts as the chief operating officer of an Enterprise. Additionally, the term "executive officer" includes any individual who performs functions similar to such positions, whether or not the individual has an official title.

For purposes of this regulation, the term "executive officer" includes any SVP in charge of a principal business unit, division or function as well as any individual, however titled, who has similar authority. A reading of the statute joined with an analysis of job functions at the Enterprises could lead to a reasonable determination that all current senior vice presidents are subject to the provisions of this section. If an individual is identified by an Enterprise in public disclosures as being an "executive officer," a presumption shall exist that such individual is an executive officer for these purposes. The Act's use of qualifying language in defining "executive officer" suggests that Congress intended OFHEO to classify covered individuals on a functional basis, rather than solely on a basis of title. That is, any officer or employee who participates or has authority to participate in major policymaking functions is deemed to be an executive officer, regardless of his or her title. Notably, the indicia of a major policymaking function may include the authority to control substantial resources or expend substantial funds of an Enterprise. A major policymaking function is not limited to a revenue-generating function.

The Act defines the term "compensation" to include "any payment of money *or the provision of any other thing of current or potential value* in connection with employment."[13] [Emphasis added.] The legislative history of the Act, demonstrates that the term is to be defined broadly.[14] OFHEO's analysis of an executive officer's compensation reasonably includes factors that are weighed by federal bank regulators in similarly assessing compensation issues. The definition of "compensation" adopted by the federal banking agencies is all-inclusive, encompassing all direct and indirect payments of benefits, both cash and non-cash, granted to or for the benefit of any executive officer including, but not limited to, payments and benefits derived from an employment contract, compensation or benefit agreement, fee arrangement, perquisite, stock option plan, post employment benefit or other compensatory arrangement.[15]

II. Background

The legislative history of the Act and that of contemporaneously enacted federal banking legislation reveal that Congress viewed executive compensation to be a serious matter of safety and soundness concern. In discussing the need for oversight of the executive compensation provided by the Enterprises, the congressional sponsor of language relating to executive compensation explicitly referred to similar legislation earlier enacted in the same Congress to require the federal bank regulators to adopt safety and soundness standards affecting, among other things, executive compensation paid by insured banks and thrift institutions, as well as their parent

[8] Section 1315(e) (12 U.S.C. 4515(e)).

[9] Section 1371(a)(3) (12 U.S.C. 4631) and section 1372 (12 U.S.C. 4632).

[10] Section 1371(d)(7) (12 U.S.C. 4631)(d)(7)).

[11] Section 309(d)(3)(B) of Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(d)(3)(B) and section 303(h)(2) of Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(h)(2)).

[12] Section 1303(7) (12 U.S.C. 4502(7). The terminology used in defining an "executive officer" under OFHEO's statute is essentially similar to the definition of "executive officer" and "officer" contained in the reporting rules of the Securities and Exchange Commission (SEC). *See* SEC Rule 3b–7 (17 CRF 240.3b–7) and SEC Rule 16a–1(f) (17 CFR 240.16a–1(f)) (1999). *See also* Note to Rule 16a.–2. For purposes of provisions in the Charter Acts relating to compensation, the term "executive officer" has the meaning given the term in section 1303 of OFHEO's statute. *See* section 309(d)(3)(C) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(d)(3)(C)) and section 303(H)(3) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(h)(3)).

[13] Section 1303(3) (12 U.S.C. 4502(3)).

[14] *See, e.g.*, Floor discussion on S. 2733 by Senator Levin at 138 Cong. Rec. S. 17923 (October 8, 1992).

[15] *See* the definitional section of the safety and soundness standards of: the Office of the Comptroller of the Currency at 12 CFR Part 30, App. A; the Board of Governors of the Federal Reserve System at 12 CFR Part 208, App. D–1; the Federal Deposit Insurance Corporation at 12 CFR Part 364, App. A and the Office of Thrift Supervision at 12 CFR Part 570, App. A.

holding companies.[16] The statutory authorities of OFHEO and the banking agencies, however, are not identical in this regard.[17] OFHEO treats as an unsafe and unsound practice any compensation arrangement that would result in an executive of an Enterprise receiving compensation that is excessive or termination benefits that are not comparable to compensation provided by other businesses to executives doing similar work.

With respect to its statutory mandate to prohibit excessive executive compensation, OFHEO evaluates all aspects of each Enterprise's executive compensation practices and policies, and periodically undertakes a study to compare compensation of executives at the Enterprises with compensation of executives in other similar businesses (including other publicly held financial institutions or major financial services companies). OFHEO separately reviews termination benefit packages submitted by the Enterprises under the prior approval requirements of the charter acts.

In order to carry out its executive compensation responsibilities, OFHEO requires each Enterprise to make timely submissions of relevant information to OFHEO on both routine and episodic bases.[18] Practice and procedures reflected in this rule have evolved over time. As noted in § 1770.2 of the proposed rule, the purposes of this regulation are to formalize the existing process and to clarify the terms used therein in order to facilitate the routine conduct and enhance the efficiency of OFHEO's procedures.

OFHEO's executive compensation authorities are recited in § 1770.1 of the proposed rule. Definitions applicable to terms used in the proposed rule are enumerated in § 1770.3. Reporting and submission requirements are set forth in § 1770.4.

Specifically, paragraph (a) of § 1770.4 identifies to whom an Enterprise is to make timely submission of relevant information in such fashion as specified by OFHEO. Paragraph (b) lists the categories of information to be provided by the Enterprise to OFHEO. Paragraph (c) sets out when information relevant to the Director's prior approval of termination benefits should be submitted by an Enterprise to OFHEO. Paragraph (d) specifies what information the Enterprise is to submit and when it must be submitted in order for OFHEO to calculate an executive officer's total termination or severance benefits package.

Section 1770.5 of the proposed rule addresses compliance requirements. Paragraph (a) codifies current practices to require that certain employment agreements expressly state that termination benefits provided therein are not to be effective until approved by the OFHEO. Additionally, the section provides that disclosures to employees should note that alteration of benefit plans that affect the benefits accorded a covered employee, that occur subsequent to OFHEO approval of a termination package, will require OFHEO review of the termination agreement at the time a covered employee terminates their relation with the Enterprise. Paragraph (b) requires the Enterprises to establish written procedures implementing the submission requirements of section 1770.4. Paragraph (c) states that failure by an Enterprise to comply with the requirements of paragraph (a) or (b) of section 1770.5 or the submission requirements of section 1770.4 may be deemed to be an unsafe or unsound practice warranting specific corrective action. Paragraph (d) of section 1770.5 provides that OFHEO may require corrective or remedial action under this regulation by an Enterprise or individual either separately from, in conjunction with, or in addition to any other remedy, or an enforcement action.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not deemed to be a significant rule under Executive Order 12866 because it will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required and this proposed rule has not been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a rule that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of this proposed rule under the Regulatory Flexibility Act. The General Counsel certifies that this proposed rule will not have a significant economic impact on a substantial number of small business entities.

Paperwork Reduction Act

This proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Unfunded Mandates Reform Act of 1995

This proposed rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. Assessment statements are not required for regulations that incorporate requirements specifically set forth in law. As explained in the preamble, this rule implements specific statutory requirements. In addition, this rule does not include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.

List of Subjects in 12 CFR Part 1770

Administrative practice and procedure, Confidential business information, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, OFHEO proposes to add 12 CFR part 1770 to read as follows:

PART 1770—EXECUTIVE COMPENSATION

Sec.

Authority: 12 U.S.C. 1452(h)(2), 1723a(d)(3)(B), 4501(6), 4502(3), 4502(7).

[16] *See* note 15 at 17922–17923.

[17] *See* note 16. The agencies' safety and soundness standards were adopted in 1992 pursuant to section 39 (12 U.S.C. 1831p–1) of the Federal Deposit Insurance Act (FDIA).

[18] OFHEO recognizes the sensitive, nonpublic nature of such information and treats submissions with appropriate safeguards under its internal procedures and regulations.

4513, 4514, 4517, 4518(a), 4631, 4632, 4636, 4641.

§ 1770.1 Authority and scope.

(a) *Authority.* Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550, entitled the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Act) (12 U.S.C. 4501 *et seq.*), established the Office of Federal Housing Enterprise Oversight ("OFHEO") as an independent office within the Department of Housing and Urban Development. In general, OFHEO is the safety and soundness regulator of two housing-related government sponsored enterprises: the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") (collectively, "the Enterprises"). The supervisory responsibilities of the Director of OFHEO (the "Director") include oversight of compensation provided by the Enterprises to their executive officers.

(b) *Scope.* The procedures set forth in this regulation apply to the OFHEO's oversight of executive compensation under the following two statutory mandates:

(1) *Prohibition of excessive compensation.* The Act empowers the Director to prohibit an Enterprise from providing compensation to any executive officer that is not reasonable and comparable with that paid by other similar businesses to executives doing similar work, *i.e.,* having similar duties and responsibilities. Businesses used for comparison purposes include publicly held financial institutions or major financial services companies. (12 U.S.C. 4518(a)) To effectuate this compensation oversight responsibility, the Act provides that the Director has full authority to take such actions as the Director determines are necessary. (12 U.S.C. 4513(8)) However, the Director may not prescribe or set a specific level or range of compensation for executive officers of the Enterprises. (12 U.S.C. 4518(b))

(2) *Prior approval of termination benefits.* The Enterprises' enabling statutes ("charter acts") provide that the Enterprises may not enter into any agreement or contract to provide any payment of money or other thing of current or potential value in connection with the termination of employment of an executive officer unless the agreement or contract is approved in advance by the Director. The Director may only approve termination benefits that are comparable to benefits provided by other businesses to executives doing similar work. Businesses used for comparison purposes include public and private entities involved in financial services and housing interests. Agreements or contracts that provide for termination payments to executives that were entered into before October 28, 1992 are not retroactively subject to approval or disapproval by the Director. However, a renegotiation, amendment or change to such an agreement or contract entered into on or before October 28, 1992 shall be considered as entering into an agreement or contract that is subject to approval by the Director. (Section 309(d)(3)(B); 12 U.S.C. 1723a(d)(3)(B) of Fannie Mae's Charter Act; Section 303(h)(2); 12 U.S.C. 1452(h)(2) of Freddie Mac's Corporation Act)

§ 1770.2 Purpose.

In exercising responsibilities related to executive compensation, the Director has established a structured process for the submission of relevant information by each Enterprise. This part codifies those procedures and clarifies the terms used therein in order to facilitate the routine conduct and enhance the efficiency of OFHEO's oversight.

§ 1770.3 Definitions.

The following definitions apply to the terms used in this part:

(a) *The Act* is Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550, Oct. 28, 1992, 106 Stat. 3672, 3941–4012 (1993), separately entitled the "Federal Housing Enterprises Financial Safety and Soundness Act of 1992."

(b) *Affiliate* means any entity that controls, is controlled by, or is under common control with, an Enterprise.

(c) *Charter acts* mean the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act, which are codified at 12 U.S.C. 1716–1723i and 12 U.S.C. 1451–1459, respectively.

(d) *Compensation* means any payment of money or the provision of any other thing of current or potential value in connection with employment. Compensation includes all direct and indirect payments of benefits, both cash and non-cash, granted to or for the benefit of any executive officer, including, but not limited to, payments and benefits derived from an employment contract compensation or benefit agreement, fee arrangement, perquisite, stock option plan, post employment benefit or other compensatory arrangement

(e) *Director* means the Director of OFHEO or his or her designee.

(f) *Enterprise* means the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation and, except as provided by the Director, any affiliate thereof.

(g) *Executive officer* means, with respect to an Enterprise:

(1) The chairman of the board of directors, chief executive officer, chief financial officer, chief operating officer, president, vice chairman, any executive vice president, and any individual who performs functions similar to such positions whether or not the individual has an official title; and

(2) Any senior vice president (SVP) or other individual with similar responsibilities, without regard to title:

(i) Who is in charge of a principal business unit, division or function, or

(ii) who reports directly to the Enterprise's Chair, Vice Chair, Chief Operating Officer or President.

(h) *OFHEO* means the Office of Federal Housing Enterprise Oversight.

§ 1770.4 Submission requirements.

(a) *Submission of information to OFHEO.* All information required to be filed for purposes of this regulation is to be provided in a timely fashion by each Enterprise to OFHEO's Associate Director of the Office of Policy Analysis and Research, as specified in this section, or as designated by the Director.

(b) *Categories of information relating to prohibition of excessive compensation.* The following materials shall be provided by each Enterprise to OFHEO for review:

(1) Minutes and supporting materials and reports from meetings of the Enterprise's Committee responsible for compensation within a week of Committee approval, where Committee actions are final insofar as affecting a determination regarding a compensation matter, except reports on the performance of specific individuals;

(2) Portions of minutes of the Board of Directors relating to executive compensation and supporting materials of the Committee responsible for compensation (not otherwise provided to OFHEO by the Committee under paragraph (b)(1) of this section), within a week of the meeting of the Board of Directors;

(3) General benefit plans applicable to covered executive officers when adopted or amended;

(4) Any studies the Enterprise conducts or contracts for with respect to compensation of executive officers when finalized;

(5) The Enterprise's annual compensation report when submitted to Congress;

(6) An updated organization chart as changes occur affecting executive officers;

(7) Proxy statements when issued;

(8) Information regarding the hiring of and payment of compensation to an executive officer for whom a contract remains under negotiation; and

(9) Such other information as deemed appropriate by the Director.

(c) *Timing of submissions related to prior approval requests of termination benefits.* All relevant information should be provided to OFHEO when an Enterprise:

(1) Enters into any agreement or contract with a new or existing executive officer that includes termination benefits;

(2) Makes any extension or other amendment to such an agreement or contract;

(3) Takes any other action to provide termination benefits to a specific executive officer, regardless of how it is effected;

(4) Makes any changes in post-employment benefit programs affecting multiple executive officers; or

(5) Changes the termination provisions of other compensation programs affecting multiple executive officers.

(d) *Specific information required for calculation of termination benefits.* Before entering into an agreement or contract to provide termination benefits to an executive officer, and before any renegotiation, amendment or change to such an agreement or contract, an Enterprise shall submit to OFHEO the following materials:

(1) The details of the agreement or program change, *e.g.*, employment agreements, termination agreements, severance agreements, and portions of Board minutes relating to executive compensation and minutes and supporting materials of the compensation committee of the Board;

(2) All information, data, assumptions and calculations for the potential total dollar value or range of values of the benefits provided, such as but not limited to salary, bonus opportunity, short-term incentives, long-term incentives, special incentives and pension provisions or related contract or benefit terms; and

(3) Such other information deemed appropriate by the Director.

§ 1770.5 Compliance

(a) An employment agreement or contract subject to the Director's prior approval, as set forth in § 1770.1(b)(2), may be entered into prior to that approval, *provided that* such agreement or contract specifically provides that termination benefits under the agreement or contract shall not be effective and no payments shall be made thereunder unless and until approved by OFHEO. Such notice should make clear that alteration of benefit plans subsequent to OFHEO approval under this section, that affect final termination benefits of an executive officer, requires review at the time of the individual's termination from the Enterprise and prior to the payment of any benefits.

(b) The Enterprises shall establish and follow written procedures implementing the submission requirements contained in § 1770.4 within 60 days of the effective date of this regulation.

(c) Failure by an Enterprise to comply with the requirements of paragraph (a) or (b) of this section or the submission requirements of § 1770.4 may be deemed to constitute an unsafe or unsound practice warranting corrective or remedial action by OFHEO.

(d) Action by OFHEO under this regulation may be taken separately from, in conjunction with, or in addition to any other corrective or remedial action, including an enforcement action to require an individual to make restitution to or reimbursement to the Enterprise of improperly paid compensation or termination benefits.

Dated: December 19, 2000.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 00–32781 Filed 12–26–00; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1780

RIN 2550–AA16

Rules of Practice and Procedure

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) solicits comment on proposed amendments to OFHEO's rules governing administrative enforcement proceedings. The amendments summarize OFHEO's statutory authority to issue cease and desist orders and to impose various corrective and remedial sanctions, including, among other things, civil money penalties, against the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), as well as their executive officers and directors. By describing the grounds on which such actions might be instituted, and providing examples of the terms and conditions the agency might impose, OFHEO seeks to ensure greater transparency to the agency's supervisory regime and the safeguards affecting Freddie Mac and Fannie Mae.

DATES: Written comments on the proposed rule must be received by February 26, 2001.

ADDRESSES: All comments concerning the proposed rule should be addressed to Alfred M. Pollard, General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street NW, Fourth Floor, Washington, DC 20552. Copies of all communications received will be available for public inspection and copying at the address above. All comments will be posted on the OFHEO web site at *http://www.ofheo.gov*. OFHEO requests that written comments submitted in hard copy also be accompanied by an electronic version in MS Word© or in portable document format (PDF) on 3.5" disk. Alternatively, comments may be submitted via electronic mail to: RegComments@ofheo.gov.

FOR FURTHER INFORMATION CONTACT: David W. Roderer, Deputy General Counsel, (202) 414–6924, Jamey Basham, Counsel (202) 414–8906 (not toll-free numbers), 1700 G Street NW, Fourth Floor, Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is: (800) 877–8339 (TDD *only*).

SUPPLEMENTARY INFORMATION:

Background

Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550, entitled the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (the Act), established OFHEO. OFHEO is an independent office within the Department of Housing and Urban Development (HUD) with responsibility for ensuring that Fannie Mae and Freddie Mac (collectively, the Enterprises) are adequately capitalized and operate safely and in conformity to the requirements of applicable laws, rules and regulations, including their respective charter acts. The Enterprises are Government-sponsored corporations established under Federal law to effect specific public purposes.[1] These include providing liquidity to the residential mortgage market and promoting the availability of mortgage

[1] *See* Federal Home Loan Mortgage Corporation Act, 12 U.S.C. 1451 *et seq.*; Federal National Mortgage Association Charter Act, 12 U.S.C. 1716 *et seq.*; Act at 12 U.S.C. 4561–67, 4562 note.

credit benefiting low-and moderate-income families and areas that are underserved by lending institutions.

The express statutory authorities of the Director of OFHEO (Director) under the Act include the primary responsibility of ensuring that the Enterprises operate in a safe and sound manner.[2] OFHEO's principal responsibility is to ensure the Enterprises are operating in a safe and sound manner, and in compliance with applicable laws and regulations. To this end, the Act grants OFHEO broad statutory powers similar to those of the Federal bank regulatory agencies, including the authority to issue regulations to carry out the Act;[3] to conduct examinations of the Enterprises and require the Enterprises to provide financial reports;[4] to establish capital requirements for the Enterprises;[5] and, in appropriate circumstances, to take prompt corrective action against any Enterprise that fails to remain adequately capitalized, including possible imposition of a conservatorship.[6]

In addition, the Act grants OFHEO essentially the same administrative enforcement authority as Congress has granted the Federal bank regulatory agencies, including the power to issue temporary and permanent cease and desist orders to an Enterprise or its executive officers or directors, and to impose civil money penalties when appropriate.[7] Prior to issuing a cease and desist order, OFHEO must conduct a hearing on the record and provide the subject of an order with notice and the opportunity to participate in such hearings. Prior to imposing civil money penalties, OFHEO must provide notice and the opportunity for a hearing to the persons subject to the penalties. Part 1780 of OFHEO's rules and regulations currently sets out the procedural rules under which such notices are provided and hearings conducted.

In this Notice of Proposed Rulemaking (NPR), OFHEO proposes to clarify the agency's enforcement rules at part 1780, which are largely procedural in nature, by describing briefly the categories of circumstances in which OFHEO may initiate enforcement actions, as well as the types of remedies and sanctions OFHEO may impose through a cease and desist order or civil money penalty. By providing the public with general information about the scope of OFHEO's administrative enforcement authority, OFHEO seeks to effect greater transparency for the OFHEO's supervisory regime and increased public awareness of the supervisory standards and safeguards affecting the Enterprises.

[2] 12 U.S.C. 4513(a), 4513(b)(1), 4517(a), 4521(a)(2)–(3).

[3] 12 U.S.C. 4513(b)(1).

[4] 12 U.S.C. 4514, 4517.

[5] 12 U.S.C. 4611–4614.

[6] 12 U.S.C. 4615–4623.

[7] 12 U.S.C. 4631–4641.

Statutory Enforcement Powers

OFHEO's general enforcement powers are codified in Subtitle C of the Act. Subtitle B of the Act specifies certain enforcement steps required to be taken by OFHEO when an Enterprise is not adequately capitalized, as well as certain discretionary enforcement actions available to OFHEO in such circumstances. Whenever the discretionary provisions of Subtitle B apply, the Director has discretion to take action under Subtitle B alone or to take alternative or simultaneous actions under the provisions of Subtitle C.[8]

OFHEO's enforcement powers extend to affiliates of the Enterprises[9] and executive officers and directors thereof. The Act defines an affiliate to be any entity that controls, is controlled by, or is under common control with an Enterprise. 12 U.S.C. 4502(1). Congress did not define control, leaving the term instead to be interpreted by OFHEO in its administrative expertise. For these purposes, OFHEO will look to see whether an entity exercises a controlling influence over the management and policies of the particular entity, whether it be by ownership of or the power to vote a concentration of any class of voting securities, the ability to elect or appoint members of the board of directors or officers of the entity, or otherwise. This standard is appropriate, in order to ensure that an Enterprise or an entity controlling it does not manipulate its organizational structure in order to evade OFHEO's enforcement jurisdiction.

The Act, at 12 U.S.C. 4631, authorizes the Director to issue a cease and desist order or orders to an Enterprise or its executive officers or directors. The Director may issue a notice of charges if the Director determines that certain conduct has occurred, or reasonably believes such conduct is about to occur:

- For an adequately capitalized Enterprise any conduct that threatens to cause a significant depletion of core capital, or for an Enterprise that is not adequately capitalized any conduct that is likely to result in a material depletion of core capital;
- Any conduct that could result in the issuance of an order to require an executive officer or director of an Enterprise to reimburse or indemnify the Enterprise, where such person is either unjustly enriched or engaged in knowing misconduct likely to cause substantial loss, as provided under the Act at 12 U.S.C. 4636(b)(3);
- Any conduct that violates a written agreement entered into by the Enterprise with the Director; or
- Any conduct that violates the Act, the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act (collectively, the Charter Acts), or any regulation, rule, or order under such Acts. However, the Director may not enforce compliance with housing goals established pursuant to 12 U.S.C. 4561–4567 under the Act,[10] with 12 U.S.C. 4566 and 4567 under the Act,[11] or with 12 U.S.C. 1723a(m)–(n) under the Federal National Mortgage Association Charter Act or 12 U.S.C. 1456(e)–(f) under the Federal Home Loan Mortgage Corporation Act.[12]

Section 4631 authorizes the Director to issue a notice of charges to initiate cease and desist proceedings if an Enterprise, an executive officer, or a director thereof engages in an unsafe or unsound practice or if the Enterprise is in an unsafe or unsound condition. As indicated by the language of the statute and its legislative history,[13] the unsafe and unsound conduct or condition in question need not be specifically defined as such by a particular statutory or regulatory provision. The Act subjects the Enterprises to an overarching obligation to conduct their operations in a manner that maintains the safe and sound condition of the Enterprise, the boundaries of which are set by OFHEO in its supervisory discretion.[14] Unsafe or unsound practices or conditions are deemed to be violations of the Act for purposes of section 4631(a)(3)(A), justifying the Director's initiation of cease and desist proceedings based on such a violation.

[8] *See* 12 U.S.C. 4631(b).

[9] The Act defines the term "enterprise" to include any affiliates thereof. 12 U.S.C. 4502(6).

[10] Provisions addressing housing goals under the authority of the Secretary of HUD.

[11] Provisions addressing reporting, monitoring and enforcement of housing goal compliance.

[12] Provisions addressing Enterprise data and reports relating to housing goals.

[13] *See,e.g.*, 68–69 H.R. Rep. 102–206, 102nd Cong., 1st Sess. (1991) (to prohibit outright any new undertaking which presents excessive management or operations risk, Director can obtain judicial enforcement of temporary cease and desist order).

[14] As is discussed in the "Background" material above, OFHEO exercises exclusive authority for matters relating to the Enterprises' safety and soundness, and vested with broad powers to that end. *See, e.g.*, 12 U.S.C. 4513(a), 4513(b)(5), 4517(a), and 4521(a)(2)–(3).

In directing OFHEO to ensure the safety and soundness of the Enterprises, the Act does not define or elaborate upon what constitutes an unsafe and unsound practice or condition. As similarly used in connection with the federal bank regulatory agencies after which Congress in large part patterned OFHEO's supervisory regime, the concept of safety and soundness is widely acknowledged to be a broad prudential standard left to the expert agency to define and refine over time in light of changes in the environment and marketplace affecting the Enterprises. The concept encompasses any action or inaction that contravenes prudent standards of operation that might result in loss or damage to the Enterprise, including failure to respond appropriately to changes in circumstances or to unforeseen events. The risk of loss or damage need not be immediate, so long as the loss or damage is likely if the conduct continued unabated or action is not taken to address the condition. Nor is it necessary that the loss or damage be of such magnitude to threaten the capital or financial integrity of the Enterprise. Prompt corrective action procedures under subtitle B of the Act separately address such thresholds.

If the Director finds that the record establishes the infraction forming the basis of the cease and desist the Director has wide latitude in structuring the remedial provisions of a cease and desist order. In addition to ordering the Enterprise, its executive officers, or its directors to cease and desist the infraction, section 4631 authorizes the Director to include provisions limiting the activities or functions of the Enterprise or its executive officers or directors, as well as provisions requiring affirmative action to correct or remedy any condition resulting from the infraction, as the Director determines appropriate. This includes, but is not limited to, provisions to:

- Require the Enterprise to seek restitution, or to obtain reimbursement, indemnification, or guarantee against loss;
- Restrict growth of the Enterprise;
- Require the Enterprise to dispose of any particular asset or assets; and
- Require the Enterprise to employ qualified officers or employees (who may be subject to approval by the Director at the direction of the Director).

The Director may include other corrective or remedial provisions as deemed appropriate, such as requirements to obtain new capital; or directives to improve design or implementation of internal controls, management reporting systems, risk measurement and limits, compliance efforts, or policies and procedures. Section 4631 also provides that the Director may order an executive officer or director of an Enterprise to make restitution or reimbursement to the Enterprise, or to provide indemnification or guarantee against loss, to the extent such person was unjustly enriched in connection with the particular conduct or violation in question, or was engaged in knowing conduct that caused or would be likely to cause a substantial loss to the Enterprise.

Under the Act at 12 U.S.C. 4632, the Director may issue a temporary cease and desist order. A temporary cease and desist order may be issued if any conduct or threatened conduct specified in a notice of charges served on the Enterprise, executive officer, or director is likely to cause any of the following conditions or circumstances prior to proceedings for a permanent cease and desist order being completed:

- Insolvency;
- Significant depletion of the core capital of the Enterprise; or
- Other irreparable harm to the Enterprise.

The temporary order may direct the Enterprise, executive officer, or director to cease the conduct and take affirmative action to prevent the insolvency, depletion of capital, or harm for the duration of the cease and desist proceedings. Also, if a notice of charges specifies that the books and records of the Enterprise are so incomplete or inaccurate that the Director is unable through normal supervisory processes to determine either the financial condition of the Enterprise or the details or purpose of transactions that may have a material effect on the financial condition of the Enterprise, the Director may issue a temporary order concerning the records. The order may direct the Enterprise to cease the activity or practice that gave rise to the incomplete or inaccurate state of the records, and may direct the Enterprise to make the records complete and accurate.

The Act, at 12 U.S.C. 4636, also authorizes the Director to impose civil money penalties up to $5,000[15] (a first-tier CMP) for each day that an Enterprise:

- Violates the Act, the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act (collectively, the Charter Acts), or any regulation, rule, or order under such Acts. However, the Director may not enforce compliance with housing goals established pursuant to 12 U.S.C. 4561–4567 under the Act, with 12 U.S.C. 4566 and 4567 under the Act, or with 12 U.S.C. 1723a(m)–(n) under the Federal National Mortgage Association Charter Act or 12 U.S.C. 1456(e)–(f) under the Federal Home Loan Mortgage Corporation Act.
- Violates a written agreement entered into by the Enterprise with the Director; or
- Violates any permanent or temporary cease and desist order entered under sections 4631 or 4632, or orders entered pursuant to 12 U.S.C. 4615 or 4616 under the Act.[16]

First-tier CMPs are not appropriate if the violation or conduct at issue consists of an unsafe and unsound practice that is not prohibited by a particular statute, regulation, or order. Under the language of section 4636, such violations or conduct are susceptible to second-or third-tier CMPs, if the aggravating circumstances discussed below are also present.[17]

Section 4636 authorizes the Director to impose civil money penalties on an Enterprise up to $25,000 for each day of violation or conduct, or on an executive officer or director of up to $10,000 for each day of violation or conduct (a second-tier CMP). Second-tier CMPs are applicable to the same kinds of infractions covered by first-tier CMPs, as well as any violation or conduct that causes or is likely to cause a loss to the Enterprise, if the Director also find that the violation or conduct:

- Is part of a pattern of misconduct; or

[15] For violations or conduct occurring after October 23, 1996, the maximum amount of each tier of civil money penalties is ten percent higher than the amounts set out in section 1376 of the Act, in accordance with the Debt Collection Improvement Act of 1996 (28 U.S.C. 2461 note). A table of the increased maximum penalties is available at section 1780.80 of OFHEO's rules and regulations (12 CFR § 1780.80).

[16] Provisions setting out supervisory actions applicable to undercapitalized Enterprises and significantly undercapitalized Enterprises, respectively.

[17] Although unsafe and unsound practices are conduct which violates the Safety and Soundness Act (see the discussion in connection with permanent cease and desist orders above) and first-tier CMPs are applicable to an Enterprise's violation of the Safety and Soundness Act (section 4636(a)(1)), section 4636(a)(4) separately mentions any conduct that causes or is likely to cause a loss to the Enterprise, and first-tier CMPs are only available for conduct violating sections 4636(a)(1)–(3) (section 4636(b)(1)). Nevertheless, first-tier CMPs are applicable to violations of any OFHEO order or regulation setting out safety and soundness standards (or any other applicable regulation or order), as such violations are covered by section 4636(a)(1) without reservation.

- Involved recklessness and caused or would be likely to cause a material loss to the Enterprise.

If the Director finds instead that the violation or conduct was knowing and caused or would be likely to cause a substantial loss to the Enterprise, the Director may impose penalties on an Enterprise of up to $1,000,000 per day of violation or conduct or on an executive officer or director of up to $100,000 per day of violation or conduct (a third-tier CMP).

The Director may impose civil money penalties in addition to any other civil remedy or administrative sanctions available under the Act.[18] In determining the appropriateness and amount of a penalty (within the range established for each tier), the Director may give consideration to the following factors:

- The gravity of the violation or conduct;
- Any history of prior violations or conduct;
- The effect of the penalty on the safety and soundness of the Enterprise;
- Any injury to the public;
- Any benefits received; and
- Deterrence of future violations or conduct.

Under section 4636(c)(2), the Director may take into account any other factors that the Director has determined, by regulation, are appropriate. OFHEO proposes to add the following factors to those specified in the statute itself:

- Any related or unrelated previous supervisory actions;
- Any loss or risk of loss to the Enterprise;
- Any attempts at concealment;
- Any circumstances of hardship upon an executive officer or director;
- Promptness and effectiveness of any efforts to ameliorate the consequences of the violation or conduct; and
- Candor and cooperation after the fact.

OFHEO requests public comment specifically addressing these factors, as well as the question of whether OFHEO should adopt other factors as part of this rulemaking.

Under the Act at 12 U.S.C. 4639, hearings concerning cease and desist orders or civil money penalties are to be open to the public, unless the Director determines that an open hearing would be contrary to the public interest. Final orders in cease and desist proceedings or civil money penalty proceedings are also to be made available to the public, as well as any modifications thereto, unless the Director determines in writing to delay public disclosure for a reasonable time if immediate disclosure would seriously threaten the financial health or safety of the Enterprise.

[18] 18 12 U.S.C. 4636(f).

Proposed Rule Synopsis

The proposed rule amends the scope section of the rule, § 1780.1, to add a brief summary of the Director's legal authorities as discussed above. In addition to the specific question posed above requesting public comments whether OFHEO should expand the list of factors taken into account in setting the amount of a civil money penalty, OFHEO welcomes public comments on all aspects of the proposed rule.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

The proposed regulation is not classified as a significant rule under Executive Order 12866 because it will not result in an annual effect on the economy of $100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based Enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required and this proposed regulation has not been submitted to the Office of Management and Budget for review.

Unfunded Mandates Reform Act of 1995

This proposed rule does not include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year. As a result, the proposed rule does not warrant the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of the proposed regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the proposed regulation, if adopted, is not likely to have a significant economic impact on a substantial number of small business entities because the regulation only affects the Enterprises, their executive officers, and their directors.

Paperwork Reduction Act of 1995

This proposed rules contain no information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

List of Subjects in 12 CFR Part 1780

Administrative practice and procedure, Penalties.

Accordingly, for the reasons set out in the preamble, the Office of Federal Housing Enterprise Oversight proposes to amend 12 CFR part 1780 as follows:

PART 1780—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 1780 is revised to read as follows:

Authority: 12 U.S.C. 4501, 4513, 4517, 4521, 4631–4641.

Subpart A—General Rules

2. Revise § 1780.1 to read as follows:

§ 1780.1 Scope.

(a) *Types of proceedings governed by these rules.* This part prescribes rules of practice and procedure applicable to the following adjudicatory proceedings:

(1) Cease-and-desist proceedings under sections 1371 and 1373, title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550, entitled The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (1992 Act) (12 U.S.C. 4631 and 4633);

(2) Civil money penalty assessment proceedings under sections 1373 and 1376 of the 1992 Act (12 U.S.C. 4633 and 4636);

(3) Civil money penalty assessment proceedings under section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a; and

(4) Other adjudications required by statute to be determined on the record after opportunity for hearing, except to the extent otherwise provided for in the regulations specifically governing such an adjudication.

(b) *Cease and desist orders.* (1) Grounds for instituting proceedings. Sections 1371(a)–(b) of the 1992 Act

specify when the Director of OFHEO may issue a notice of charges instituting cease and desist proceedings, to be conducted according to the procedural rules in this part. The Director may issue a notice of charges as described in § 1780.20 if the Director determines, or the Director has reasonable cause to believe that, an Enterprise or an executive officer or director thereof has engaged in, or its is about to engage in, any of the following conduct or violations:

(i) For an adequately capitalized Enterprise, any conduct which threatens to cause a significant depletion of the Enterprise's core capital; or for an Enterprise which is not in the adequately capitalized category, any conduct that is likely to result in a material depletion of the Enterprise's core capital;

(ii) Any conduct that may result in the issuance of a cease and desist order that requires an executive officer or director of an Enterprise to make restitution, provide reimbursement, indemnification or guarantee against loss to the Enterprise, where such person was either unjustly enriched or engaged in knowing misconduct likely to cause substantial loss to the Enterprise;

(iii) Any conduct that violates a written agreement entered into by an Enterprise with the Director; or

(iv) Any conduct that violates the 1992 Act, the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 *et seq.*), the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 *et seq.*), or any regulation, rule, or order under such Acts, or any unsafe and unsound practice (in that it is contrary to prudent standards of operation which might cause loss or damage to the Enterprise, or is likely to cause such loss or damage in the future if continued unabated), or any unsafe and unsound condition, except that the Director may not enforce compliance with housing goals established under subpart B of part 2 of subtitle A of the 1992 Act (12 U.S.C. 4561–4567), with section 1336 or 1337 of the 1992 Act (12 U.S.C. 4566–4567), or with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act (12 U.S.C. 4566–4567), or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(e)–(f)).

(2) *Remedial provisions of cease and desist orders.* As provided by sections 1371(c)–(d) of the 1992 Act, a cease and desist order issued as set out in § 1780.55 may require the Enterprise, or an executive officer or director thereof, to refrain from engaging in conduct or violations specified in paragraphs (b)(1)(i) through (iv) of this section and/or require correction of an unsafe or unsound condition specified in paragraph (b)(1)(iv) of this section, as found by the Director, and may also require the Enterprise, an executive officer, or director thereof to take such action as the Director determines to be appropriate to correct or remedy the conditions resulting from such conduct or violation. This may include, but is not limited to, provisions to:

(i) Require the Enterprise to seek restitution, or to obtain reimbursement, indemnification, or guarantee against loss;

(ii) Require the Enterprise to obtain new capital;

(iii) Restrict asset or liability growth of the Enterprise;

(iv) Require the Enterprise to dispose of any asset involved;

(v) Require the Enterprise to improve design or implementation of internal policies, compliance efforts, internal controls, risk measurement and limits, and management reporting systems;

(vi) Require the Enterprise to employ qualified officers or employees (who may be subject to approval by the Director at the direction of the Director);

(vii) Require the Enterprise, an executive officer or director thereof to adhere to limits on activities or functions; or

(viii) Require the Enterprise to take such other action as the Director determines appropriate.

(3) *Restitution and indemnification by executive officers and directors.* As part of the affirmative relief described in paragraph (b)(2) of this section, section 1371(d)(1) of the 1992 Act provides that the Director may require an executive officer or director of an Enterprise to make restitution or reimbursement to the Enterprise, or to provide indemnification or guarantee against loss, to the extent such person was:

(i) Unjustly enriched in connection with the conduct or violation in question; or

(ii) Engaged in such conduct or violation knowingly, and such conduct or violation caused or would be likely to cause a substantial loss to the Enterprise.

(4) *Temporary cease and desist orders.* (i) Under sections 1372(a)–(b) of the 1992 Act, if the Director determines that any conduct or violation or threatened conduct or violation described in the notice of charges in cease and desist proceedings described under § 1780.20 is likely to cause insolvency, to cause significant depletion of core capital, or to cause other irreparable harm to an Enterprise before proceedings described in this part will be completed, the Director may issue a temporary cease and desist order. Such order may direct the Enterprise, executive officer or director thereof to refrain from the conduct or violation, and to take whatever affirmative action the Director determines to be appropriate to prevent or remedy such insolvency, depletion, or harm pending completion of such cease and desist proceedings.

(ii) In addition, section 1372(c) of the 1992 Act addresses cases in which the Director determines that the books and records of an Enterprise are so incomplete or inaccurate that the Director is unable through normal supervisory processes to determine either the financial condition of the Enterprise or the details or purpose of transactions that may have a material effect on the financial condition of the Enterprise. In connection with issuance of the notice of charges in cease and desist proceedings specified by § 1780.20, the Director may issue a temporary order directing the Enterprise to cease the activity or practice that gave rise, whether in whole or in part, to the incomplete or inaccurate state of the records, and may require the Enterprise to take affirmative action to make the records complete and accurate.

(c) *Civil money penalties.* (1) *First tier CMPs.* Section 1736 of the 1992 Act authorizes the Director to assess civil money penalties against an Enterprise, in proceedings to be conducted according to the procedural rules in this part. The Director may issue a notice of charges to an Enterprise, as described in § 1780.20, to impose money penalties of up to $5,000 (adjusted for inflation as described in § 1780.80) for each day that the Enterprise engages in conduct that violates:

(i) The 1992 Act, the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act, or any regulation, rule, or order under such Acts, except with regard to housing goals established under subpart B of part 2 of subtitle A of the 1992 Act, with section 1336 or 1337 of the 1992 Act, or with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act, or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act;

(ii) Any written agreement entered into by the Enterprise with the Director; or

(iii) Any permanent or temporary cease and desist order entered under sections 1371 or 1372 of the 1992 Act, or sections 1365 (12 U.S.C. 4615, setting out supervisory actions applicable to

undercapitalized Enterprises) or 1366 (12 U.S.C. 4616, setting out supervisory actions applicable to significantly undercapitalized institutions) of the 1992 Act.

(2) *Second tier CMPs.* The Director may issue a notice of charges to an Enterprise to impose money penalties of up to $25,000 (adjusted for inflation as described in § 1780.80) for each day that the Enterprise engages in the following violation or conduct, or to an executive officer or director of an Enterprise to impose money penalties of up to $10,000 (adjusted for inflation as described in § 1780.80) for each day such person or persons engages in the following violation or conduct, if the Director finds that the violation or conduct was either part of a pattern of misconduct or involved recklessness and causes or is likely to cause a material loss to the Enterprise:

(i) Any violation described in paragraphs (c)(1)(i) through (iii) of this section; or

(ii) Any conduct that causes or is likely to cause a loss to the Enterprise.

(3) *Third tier CMPs.* The Director may issue a notice of charges to an Enterprise to impose money penalties of up to $1,000,000 (adjusted for inflation as described in § 1780.80) for each day that the Enterprise engages in a violation or conduct described in paragraphs (c)(2)(i) and (ii) of this section, or to an executive officer or director of an Enterprise to impose money penalties of up to $100,000 (adjusted for inflation as described in § 1780.80) for each day such person or persons engages in such violation or conduct described in paragraphs (c)(2)(i) and (ii) of this section, if the Director finds that the violation or conduct was knowing and caused or is likely to cause a substantial loss to the Enterprise.

(4) *Amount of CMPs.* In determining the amount of a civil money penalty within the range of penalties described in paragraphs (c)(1) through (3) of this section, the Director may fashion sanctions in any such amount as deemed to be appropriate taking into consideration such factors as:

(i) The gravity of the violation or conduct;

(ii) Any loss or risk of loss to the Enterprise;

(iii) Any benefits received;

(iv) Any attempts at concealment;

(v) Any history of prior violations or conduct;

(vi) Any related or unrelated previous supervisory actions;

(vii) Any injury to the public;

(viii) Deterrence of future violations or conduct;

(ix) The effect of the penalty on the safety and soundness of the Enterprise;

(x) Any circumstances of hardship upon an executive officer or director;

(xi) Promptness and effectiveness of any efforts to ameliorate the consequences of the violations or conduct; and

(xii) Candor and cooperation after the fact.

(d) *Coordination with other supervisory actions.* In addition to cease and desist and/or civil money penalty proceedings under this part, the 1992 Act grants the Director other authority to take supervisory action, including requiring mandatory and discretionary supervisory actions against an Enterprise that fails to remain adequately capitalized; appointment of a conservator for an Enterprise; entering into a written agreement the violation of which is actionable through proceedings under this part, or any other formal or informal agreement with an Enterprise as may be deemed by the Director to be appropriate. Under the 1992 Act, the selection of the form of supervisory action is within the Director's discretion, and the selection of one form of action or a combination of actions does not foreclose the Director from pursuing any other supervisory action.

(e) *Proceedings against affiliates.* Under subtitle C of the 1992 Act, the Director may institute proceedings as described under this part against an affiliate of an Enterprise as well as an executive officer or director of such affiliate. An entity is affiliated with an Enterprise if the entity controls the Enterprise, is controlled by the Enterprise, or is under common control with the Enterprise. For purposes of this part, control means the ability to exercise a controlling influence over the management and policies of the entity or Enterprise, whether it be by ownership of or the power to vote a concentration of any class of voting securities, the ability to elect or appoint members of the board of directors or officers of the entity, or otherwise.

(f) *Public nature of proceedings.* As described in § 1780.6 of this part, all hearings shall be open to the public unless the Director in his discretion determines to the contrary based on public interest. The Director shall also make final orders available to the public, as well as modifications to or terminations thereof, except that the Director may determine in writing to delay public disclosure of such final orders for a reasonable time if immediate disclosure would seriously threaten the financial health or security of the Enterprise.

Dated: December 19, 2000.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 00–32782 Filed 12–26–00; 8:45 am]

BILLING CODE 4220–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–25–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) PW4000 series turbofan engines with 2nd stage high pressure turbine (HPT) air seal assembly part number (P/N) 50L976 or P/N 50L960 installed. This proposal would require operators to recalculate 2nd stage HPT air seal assembly cycles-in-service, based on flight hour-to-cycle ratio usage. This proposal would also require upon recalculation, initial and repetitive on-wing borescope inspections of 2nd stage HPT air seal assemblies for cracks based on the newly calculated service life. This proposal would also require the removal from service of any cracked seal assemblies, and the removal of seal assemblies at or before newly calculated service life limits. This proposal is prompted by reports that thirteen 2nd stage HPT air seal assemblies have been found cracked in the rim area. The actions specified by the proposed AD are intended to prevent 2nd stage HPT air seal assembly fracture that could result in an uncontained engine failure.

DATES: Comments must be received by February 26, 2001.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–25–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9–ane–adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8

a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main Street, East Hartford, CT 06108. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Tara Goodman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington MA 01803–5299; telephone: (781) 238–7130, fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NE–25–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–25–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

This proposal is prompted by reports that thirteen 2nd stage HPT air seal assemblies have been found cracked in the rim area. The current design 2nd stage HPT air seal assemblies are operating in a temperature environment that is hotter than the manufacturer anticipated. Investigation shows that the crack initiation and propagation result from thermal mechanical fatigue. Investigation also revealed that the length of the flight, or mission cycle affects the service life limit of the 2nd stage HPT air seal assembly. Therefore in recalculating the service life of 2nd stage HPT air seal assemblies, this AD requires operators to determine, on a monthly basis, the flight hour-to-cycle-ratio for the hours and cycles accumulated that month, and then to apply the appropriate initial inspection threshold and repetitive cyclic inspection interval. Cracking of the 2nd stage HPT air seal assembly, if not corrected, could result in seal fracture and uncontained engine failure. The manufacturer has informed the FAA that the 2nd stage HPT air seal assembly is currently being redesigned, and that upon completion of the certification, the installation of the new design will act as terminating action to the repetitive inspection requirements of the proposed AD. This proposed rule may be revised based on the new design.

Service Information

The FAA has reviewed and approved the technical contents of PW Alert Service Bulletin (ASB) No. PW4G–112–A72–233, dated August 25, 2000. These contents describe procedures for operators to: (1) Determine, on a monthly basis, the flight hour-to-cycle ratio for the hours and cycles accumulated that month. (2) Apply the appropriate initial inspection threshold and repetitive cyclic inspection interval. (3) Recalculate the service life of 2nd stage HPT air seals. (4) Determine the appropriate inspection interval. The ASB also includes procedures for the removal from service of any cracked 2nd stage HPT seal assemblies or the removal of 2nd stage HPT seal assemblies at or before the newly calculated service life limits.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require recalculation of service lives of 2nd stage HPT air seal assemblies, and the initial and repetitive on-wing borescope inspections of 2nd stage HPT air seal assemblies for cracks. The proposed action would also require the removal from service of any cracked seal assemblies, or the removal of seal assemblies at or before the calculated service life limits. The actions would be required to be accomplished in accordance with the ASB described previously.

Economic Analysis

The FAA estimates that there are 233 engines of the affected design in the worldwide fleet, and that 96 engines installed on aircraft of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 2.3 work hours per engine to accomplish the proposed on-wing borescope inspection, and that the average labor rate is $60 per work hour. The FAA estimates that approximately 47% of the certified life of the affected parts will be lost. Required parts would cost $235,950 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $10,659.312.

Regulatory Impact

This proposal does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposal.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pratt & Whitney: Docket No. 2000–NE–25–AD.

Applicability: This airworthiness directive (AD) is applicable to Pratt & Whitney (PW) models PW4074, PW4077, PW4077D, and PW4090 turbofan engines with 2nd stage high pressure turbine (HPT) air seal assembly part number (P/N) 50L976 or P/N 50L960 installed. These engines are installed on but not limited to Boeing 777 series airplanes.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent 2nd stage HPT air seal assembly failure that could result in uncontained engine failure, accomplish the following:

Calculation of Service Limits

(a) Within 30 days of the effective date of this AD, and then each calendar month thereafter, determine the hour-to-cycle ratio of 2nd stage HPT air seal assemblies based on the hours and cycles accumulated in the previous month in accordance with Paragraph 1 of the Accomplishment Instructions for air seal management of PW Alert Service Bulletin (ASB) No. PW4G–112–A72–233, dated August 25, 2000.

Borescope Inspections

(b) For 2nd stage HPT air seal assemblies, determine the initial inspection time and repetitive inspection interval in cycles, in accordance with Paragraph 2 of the Accomplishment Instructions for air seal management of PW ASB No. PW4G–112–A72–233, dated August 25, 2000. Perform borescope inspections of the 2nd stage HPT air seal assembly for cracks, and remove HPT air seal assemblies from service if cracked, in accordance with the On-Wing Procedure section of Accomplishment Instructions of PW ASB No. PW4G–112–A72–233, dated August 25, 2000.

New Cycle Limits

(c) Determine new cycle limits for 2nd stage HPT air seal assemblies in accordance with Paragraph 3 of the Accomplishment Instructions for air seal management of PW ASB No. PW4G–112–A72–233, dated August 25, 2000, and remove from service 2nd stage HPT air seal assemblies prior to exceeding those limits.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their request through an appropriate Federal Aviation Administration (FAA) Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

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

Issued in Burlington, Massachusetts, on December 15, 2000.

David A. Downey,

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

[FR Doc. 00–32879 Filed 12–26–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–89–AD]

RIN 2120–AA64

Airworthiness Directives; DG Flugzeugbau GmbH Model DG–500MB Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain DG Flugzeugbau GmbH (DG Flugzeugbau) Model DG-500MB sailplanes equipped with a SOLO 2625 02 engine.

The proposed AD would require you to remove the engine from the propeller mount; install additional access holes in the propeller mount; install the modified engine to the propeller mount; do a ground test run; and replace the digital engine indicator circuit breaker with a new circuit breaker. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the Federal Republic of Germany. The actions specified by the proposed AD are intended to correct propeller drive belt tension that could cause damage to the engine crankshaft and to replace an inadequate circuit breaker. This could lead to engine failure and loss of sailplane control.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule by February 1, 2001.

ADDRESSES: Send three copies of your comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–89–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

You may get service information that applies to the proposed AD from DG Flugzeugbau GmbH, Postbox 41 20, D–76646 Bruchsal, Federal Republic of Germany; telephone: +49 7257–890; facsimile: +49 7257–8922. You may also read this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on the proposed AD? We invite your comments on the proposed rule. You may send whatever written data, views, or arguments you choose. You need to include the rule's docket number and send your comments in triplicate to the address specified under the caption **ADDRESSES.** We will consider all comments received by the closing date specified above, before acting on the proposed rule. We may change the proposals contained in this notice in light of the comments received.

Are there any specific portions of the proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might require a change to the proposed rule. You may look at all comments we receive. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this proposal.

We are re-examining the writing style we currently use in regulatory

documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on the ease of understanding this document, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.faa.gov/language/.

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 99–CE–89–AD." We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for the Federal Republic of Germany, notified FAA that an unsafe condition may exist on all DG Flugzeugbau Model DG–500MB sailplanes equipped with a SOLO 2625 02 engine. The LBA reports that the service history for the SOLO 2625 02 engine shows a need to modify the front crank shaft bearing. Additionally, the digital engine indicator circuit breaker amperage is too low for use and needs replacement.

What are the consequences if the condition is not corrected? The actions specified by the proposed AD are intended to correct propeller drive belt tension that could cause damage to the engine crankshaft, and to replace an inadequate circuit breaker. Such failure could result in loss of power and consequently the loss of sailplane control.

Is there service information that applies to this subject? DG Flugzeugbau has issued: Technical Note No. 843/13, dated November 3, 1999. SOLO, the engine manufacturer, has issued Technical Note 4600–1.

What are the provisions of these technical notes? These technical notes includes procedures for:

—Removing the engine from the propeller mount;
—Modifying the engine;
—Installing additional access holes in the propeller mount;
—Installing the modified engine to the propeller mount;
—Doing a ground test run; and
—Replacing the digital engine indicator circuit breaker with a new circuit breaker.

What action did LBA take? The LBA classified this DG Flugzeugbau technical note as mandatory and issued German AD Number 1999–383, dated December 1, 1999, to ensure the continued airworthiness of these sailplanes in Germany.

Was this in accordance with the bilateral airworthiness agreement? These sailplane models are manufactured in Germany and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Complying with this bilateral airworthiness agreement, the LBA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of the Proposed AD

What has FAA decided? The FAA has examined the findings of the LBA; reviewed all available information, including the technical note referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other DG Flugzeugbau Model DG–500MB sailplanes of the same type design that are equipped with a SOLO 2625 02 engine;
—The actions specified in the previously-referenced technical note should be accomplished on the affected sailplanes; and
—AD action should be taken in order to correct this unsafe condition.

What would the proposed AD require? This proposed AD would require you to incorporate the actions in the previously referenced technical notes.

Cost Impact

How many sailplanes would the proposed AD impact? We estimate that the proposed AD affects 1 sailplane in the U.S. registry.

What would be the cost impact of the proposed AD on owners/operators of the affected sailplanes? We estimate the following costs to do the proposed modification:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
12 workhours × $60 per hour = $720	The manufacturer will do the engine modification and provide the new circuit breaker under warranty.	$720.	$720 × 1 = $720.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

DG Flugzeugbau GMBH: Docket No. 99–CE–89–AD.

(a) *What sailplanes are affected by this AD?* This AD affects Model DG–500MB sailplanes, all serial numbers equipped with a SOLO 2625 02 engine, that are certificated in any category.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to correct propeller drive belt tension that could cause damage to the engine crankshaft and to replace an inadequate circuit breaker. Such failure could lead to engine failure and loss of control of the sailplane.

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

Actions	Compliance time	Procedures
(1) Remove the engine from the propeller mount.	Within the next 25 hours time-in-following service (TIS) after the effective date of this AD.	Do this action following the maintenance manual. Ship engine to the engine manufacturer, SOLO, or a licensed repair station, for modification according to the SOLO Technical Note (TN) 4600–1.
(2) Install additional access holes in the propeller mount.	Before further flight after removing the engine and before installing the modified engine to the propeller mount.	Do this action following drawing 5M102 of DG Flugzeugbau Technical Note 843/13, dated November 3, 1999.
(3) Install the modified engine to the propeller mount.	Before further flight after removing the engine and after the engine modification.	Do this action following the maintenance manual.
(4) Do a ground test run	Before further flight after the previous action ..	Do this action following DG Flugzeugbau Technical Note 843/13, dated November 3, 1999.
(5) Replace the digital engine indicator (DEI) circuit breaker with a new 5 ampere Klixon 7277–2–5A circuit breaker (or FAA-approved equivalent part number).	Before further flight after the previous actions	Do this action following DG Flugzeugbau Technical Note 843/13, dated November 3, 1999.
(6) Do not install any engine that has not been modified following SOLO TN 4600–1.	As of the effective date of this AD	Not Applicable.
(7) Do not install any DEI circuit breaker that is not a 5 ampere Klixon 7277–2–5A circuit breaker (or FAA-approved equivalent part number).	As of the effective date of this AD	Not Applicable.

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

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

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

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

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

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from DG Flugzeugbau GmbH, Postbox 41 20, D–76646 Bruchsal, Federal Republic of Germany. You may read these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in German AD 1999–383, dated December 1, 1999.

Issued in Kansas City, Missouri, on December 19, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–32878 Filed 12–26–00; 8:45 am]

BILLING CODE 4910–13–U

POSTAL SERVICE

39 CFR Part 266

Privacy Act of 1974; Implementation

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service is proposing to amend its regulations implementing the Privacy Act of 1974, 5 U.S.C. 552a. This amendment modifies existing regulations (39 CFR 266.9) to exempt system of records, Office of Inspector General-Investigative File System, USPS 300.010, from certain provisions of the Act and corresponding agency regulations.

DATES: Comments must be received on or before January 26, 2001.

ADDRESSES: Written comments should be addressed to the Manager, Finance Administration/FOIA, Postal Service, 475 L'Enfant Plaza SW, Room 8141, Washington, DC 20260–5202. Copies of all written comments will be available Monday through Friday for public inspection and photocopying between 9 a.m. and 4 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Gladis Griffith, Legal Director, Office of Inspector General (703) 248–4683.

SUPPLEMENTARY INFORMATION: The Office of Inspector General (OIG) is a component of the Postal Service that performs as one of its principal functions investigations into violations of criminal law in connection with Postal Service programs and operations, pursuant to the Inspector General Act of 1978, as amended. 5 U.S.C. App.3. The OIG Investigative File System falls within the scope of subsections (j)(2), (k)(2), and (k)(5) of the Act.

The Postal Service has exempted certain systems of records that it maintains from specific provisions of the Privacy Act. At the time it adopted the exemptions contained in its Privacy Act regulations (39 CFR 266.9), the Postal Service stated its reason for each exemption in the preamble of the notice of proposed rulemaking (40 FR 37227, August 26, 1975). These reasons were added to the text of § 266.9 by final rule published July 13, 1994 (59 FR 35625). This proposed rule does not change the current application of exemptions, except to apply certain exemptions to the OIG Investigative File System.

List of subjects in 39 CFR Part 266 Privacy.

PART 266—[Amended]

Accordingly, 39 CFR is amended as set forth below:

1. The authority citation for Part 266 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552a.

2. In § 266.9 revise paragraphs (b)(1)(vii), (b)(2) introducing text, (b)(2)(i), (b)(2)(ii), (b)(2)(iii) and add paragraph (b)(2)(viii) to read as follows:

§ 266.9 Exemptions.

* * * * *

(b) * * *

(1) * * *

(vii) Subsection (e)(4)(G) and (H) requires an agency to publish a **Federal Register** notice of its procedures whereby an individual can be notified upon request whether the system of records contains information about the individual, how to gain access to any record about the individual contained in the system, and how to contest its content. Subsection (e)(4)(I) requires the foregoing notice to include the categories of sources in the system.

* * * * *

(2) Inspection Requirements—Investigative File System, USPS 080.010, Inspection Requirements—Mail Cover Program, USPS 080.020, and Office of Inspector General-Investigative File System, USPS 300.010. These systems of records are exempt from 5 U.S.C. 552a (c)(3) and (4), (d)(1)–(4), (e)(1)–(3), (e)(4) (G) and (H), (e)(5) and (8), (f), (g), and (m). In addition, system 300.010 is exempt from 5 U.S.C. 552a(e)(4)(I). The reasons for exemption follow:

(i) Disclosure to the record subject pursuant to subsections (c)(3), (c)(4), or (d)(1)–(4) could:

(A) Alert subjects that they are targets of an investigation or mail cover by the Postal Inspection Service or an investigation by the Office of Inspector General;

(B) Alert subjects of the nature and scope of the investigation and of evidence obtained;

(C) Enable the subject of an investigation to avoid detection or apprehension;

(D) Subject confidential sources, witnesses, and law enforcement personnel to harassment or intimidation if their identities were released to the target of an investigation;

(E) Constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation;

(F) Intimidate potential witnesses and cause them to be reluctant to offer information;

(G) Lead to the improper influencing of witnesses, the destruction or alteration of evidence yet to be discovered, the fabrication of testimony, or the compromising of classified material; and

(H) Seriously impede or compromise law enforcement, mail cover, or background investigations that might involve law enforcement aspects as a result of the above.

(ii) Application of subsections (e)(1) and (e)(5) is impractical because the relevance, necessity, or correctness of specific information might be established only after considerable analysis and as the investigation progresses. As to relevance (subsection (1)), effective law enforcement requires the keeping of information not relevant to a specific Postal Inspection Service investigation or Office of Inspector General investigation. Such information may be kept to provide leads for appropriate law enforcement and to establish patterns of activity that might relate to the jurisdiction of the Office of Inspector General, Postal Inspection Service, and/or other agencies. As to accuracy (subsection (e)(5)), the correctness of records sometimes can be established only in a court of law.

(iii) Application of subsections (e)(2) and (3) would require collection of information directly from the subject of a potential or ongoing investigation. The subject would be put on alert that he or she is a target of an investigation by the Office of Inspector General, or an investigation or mail cover by the Postal Inspection Service, enabling avoidance of detection or apprehension, thereby seriously compromising law enforcement, mail cover, or background investigations involving law enforcement aspects. Moreover, in certain circumstances the subject of an investigation is not required to provide information to investigators, and information must be collected from other sources.

* * * * *

(viii) The requirement of subsection (e)(4)(I) does not apply to system 300.010, because identification of record source categories could enable the subject of an investigation to improperly interfere with the conduct of the investigation.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–32958 Filed 12–26–00; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 266

Privacy Act of 1974; Implementation

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The U.S. Postal Service proposes to amend its regulations implementing the Privacy Act of 1974, 5 U.S.C. 552a. This proposed rule would amend its regulation to exempt a new system of records, USPS 050.080, Finance Records-Suspicious Transaction Reports, from certain provisions of the Privacy Act. The exemptions are intended to comply with legal prohibitions against the disclosure of certain kinds of information, and to protect certain information about individuals maintained in the system of records.

DATES: Comments must be received on or before January 26, 2001.

ADDRESSES: Written comments should be addressed to the Manager, Finance Administration/FOIA, U.S. Postal Service, 475 L'Enfant Plaza SW, room 8141, Washington, DC 20260–5202. Copies of all written comments will be available Monday through Friday for public inspection and photocopying between 9 a.m. and 4 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Henry Gibson, (202) 268–4203.

SUPPLEMENTARY INFORMATION: Pursuant to the Bank Secrecy Act, 31 U.S.C. 5318(g), anti-money laundering provisions, and implementing regulations of the U.S. Treasury, 31 CFR Part 103, the Postal Service is required to report to the Department of the Treasury certain suspicious financial transactions that are relevant to a possible violation of law or regulation. Further, the Postal Service is prohibited from notifying any participant in the

transaction that a report has been made. 31 U.S.C. 5318(g)(2).

The Postal Service is publishing separately a notice of a new system of records, USPS 050.080, Finance Records-Suspicious Transaction Reports, which was made necessary by the reporting requirements of the Bank Secrecy Act. The system of records contains information about certain postal customers who purchase or receive money orders, wire transfers, or stored value cards.

In order to permit compliance with the non-notification requirement of the Bank Secrecy Act, the Postal Service is adopting an exemption from the Privacy Act provisions related to individual access. Under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is "investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section."

The Postal Service is hereby giving notice of a proposed rule to exempt the Suspicious Transaction Report system from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). The reasons for exempting the system of records from sections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Privacy Act are set forth in the proposed rule.

List of Subjects in 39 CFR Part 266

Privacy.

For the reasons set out in the preamble, the Postal Service proposes to amend part 266 of 39 CFR as follows:

PART 266—PRIVACY OF INFORMATION

1. The authority citation for part 266 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552a.

2. Section 266.9 is amended by adding paragraph (b)(7) to read as follows:

§ 266.9 Exemptions.

* * * * *

(b) * * *

(7) Finance Records-Suspicious Transaction Reports, USPS 050.080. This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1)–(4), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2) as material compiled for law enforcement purposes. The reasons for exemption follow.

(i) Disclosure to the record subject pursuant to subsections (c)(3) or (d)(1)–(4) would violate the non-notification provision of the Bank Secrecy Act, 31 U.S.C. 5318(g)(2), under which the Postal Service is prohibited from notifying a transaction participant that a suspicious transaction report has been made. In addition, the access provisions of subsections (c)(3) and (d) would alert individuals that they have been identified as suspects or possible subjects of investigation and thus seriously hinder the law enforcement purposes underlying the suspicious transaction reports.

(ii) This system is in compliance with subsection (e)(1), because maintenance of the records is required by law. Strict application of the relevance and necessity requirements of subsection (e)(1) to suspicious transactions would be impractical, however, because the relevance or necessity of specific information can often be established only after considerable analysis and as an investigation progresses.

(iii) The requirements of subsections (e)(4)(G), (H), and (I) and subsection (f) do not apply because this system is exempt from the individual access and amendment provisions of subsection (d). Nevertheless, the Postal Service has published notice of the record source categories and the notification, access, and contest procedures.

An appropriate revision of 39 CFR 266.9 to reflect the proposed change will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–32960 Filed 12–26–00; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX; FRL–6922–4]

Approval and Promulgation of Implementation Plans; Texas; Ozone; Beaumont/Port Arthur Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the Texas 1-hour ozone attainment demonstration State Implementation Plan (SIP) for the Beaumont/Port Arthur (BPA) moderate ozone nonattainment area. The attainment demonstration SIP is addressed in the State of Texas submittals dated November 12, 1999 and April 25, 2000. The EPA is also proposing to: extend the ozone attainment date for the BPA ozone nonattainment area to November 15, 2007 while retaining the area's current classification as a moderate ozone nonattainment area; approve the State's enforceable commitment to perform a mid-course review and submit a SIP revision to the EPA by May 2004; find that the BPA area meets the Reasonably Available Technology (RACT) requirements for major sources of volatile organic compounds (VOC) emissions; and approve the motor vehicle emissions budgets (MVEB). This proposed rule is based on the requirements of the Federal Clean Air Act (the Act) related to ozone attainment demonstrations.

DATES: Written comments must be received on or before January 26, 2001.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action, including the Technical Support Document (TSD) are available for public inspection during normal business hours at the following locations.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

FOR FURTHER INFORMATION CONTACT: Steven Pratt, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733. Telephone Number (214) 665–2140, e-Mail Address: *pratt.steven@epa.gov.*

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

Table of Contents

I. Background

A. Basis for the State's Attainment Demonstration

What are the Relevant Clean Air Act Requirements?

The Act requires the EPA to establish National Ambient Air Quality Standards (NAAQS) for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare. Clean Air Act sections 108 and 109. In 1979, EPA promulgated the 1-hour ground-level ozone standard of 120 parts per billion (ppb). 44 FR 8202 (February 8, 1979).

Ground-level ozone is not emitted directly by sources. Rather, Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO_X), emitted by a wide variety of sources, react in the presence of sunlight to form ground-level ozone. NO_X and VOC are referred to as precursors of ozone.

Ozone formation is accelerated or enhanced under certain meteorological conditions, such as high temperatures and low wind speeds. Higher ozone concentrations occur downwind of areas with relatively high VOC and NO_X concentrations or in areas subject to relatively high background ozone and ozone precursor concentrations (ozone and ozone precursors entering an area as the result of transport from upwind source areas).

VOC emissions are produced by a wide variety of sources, including stationary and mobile sources. Significant stationary sources of VOC include industrial solvent usage, various coating operations, industrial and utility combustion units, petroleum and oil storage and marketing operations, chemical manufacturing operations, personal solvent usage, etc. Significant mobile sources of VOC include on-road vehicle usage and off-road vehicle and engine usage, such as farm machinery, aircraft, locomotives, and motorized lawn care and garden implements.

NO_X emissions are produced primarily through combustion processes, including industrial and utility boiler use, process heaters and furnaces, and on-road and off-road mobile sources.

An area exceeds the 1-hour ozone standard each time an ambient air quality monitor records a 1-hour average ozone concentration above 124 ppb in any given day (only the highest 1-hour ozone concentration at the monitor during any 24 hour day is considered when determining the number of exceedance days at the monitor). An area violates the ozone standard if, over a consecutive 3-year period, more than 3 days of exceedances are expected to occur at any monitor in the area. 40 CFR Part 50, App.H.

The highest of the fourth-highest daily peak ozone concentrations over the 3 year period at any monitoring site in the area is called the ozone design value for the area. The Act, as amended in 1990, required EPA to designate as nonattainment any area that was violating the 1-hour ozone standard, generally based on air quality monitoring data from the 1987 through 1989 period. Clean Air Act section 107(d)(4); 56 FR 56694 (November 6, 1991). The Act further classified these areas, based on the areas' ozone design values, as marginal, moderate, serious, severe, or extreme. Marginal areas were suffering the least significant ozone nonattainment problems, while the areas classified as severe and extreme had the most significant ozone nonattainment problems.

The control requirements and date by which attainment is to be achieved vary with an area's classification. Marginal areas were subject to the fewest mandated control requirements and had the earliest attainment date, November 15, 1993. Severe and extreme areas are subject to more stringent planning requirements but are provided more time to attain the standard. Serious areas were required to attain the 1-hour standard by November 15, 1999, and severe areas are required to attain by November 15, 2005 or November 15, 2007, depending on the areas' ozone design values for 1987 through 1989. The BPA ozone nonattainment area was initially classified as serious (56 FR 56694). Subsequently, EPA determined that the serious classification was made in error. The area was reclassified to moderate and the attainment date for a moderate area is November 15, 1996 (61 FR 14496). The BPA ozone nonattainment area is defined (40 CFR Parts 81.314 and 81.326) to contain Jefferson, Hardin and Orange Counties in Texas.

The specific requirements of the Act for moderate ozone nonattainment areas are found in part D, section 182(b). Section 172 in part D provides the general requirements for nonattainment plans. Section 172(c)(6) in part D of the Act and section 110 require SIPs to include enforceable emission limitations, and such other control measures, means or techniques as well as schedules and timetables for compliance, as may be necessary to provide for attainment by the applicable attainment date. Section 172(c)(1) requires the SIP to provide for implementation of all reasonably available control measures as expeditiously as practicable and requires the SIP to provide for attainment of the NAAQS. Section 182(b)(1)(A) requires the State to submit for the moderate nonattainment area, a 15% Rate of Progress Plan and also provide for specific annual reductions in emissions of VOC and NO_X "as necessary to attain" the ozone NAAQS by the applicable attainment date. EPA's "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 13498 dated April 16, 1992) provides the interpretive basis for EPA's rulemakings under the nonattainment plan provisions of the Act (General Preamble). In the General Preamble, the EPA provides that this section 182(b)(1)(A) requirement for attainment may be met by the use of EPA-approved modeling techniques. As part of today's proposal, EPA is proposing action on the attainment demonstration SIP revision submitted by the State of Texas for the BPA moderate ozone nonattainment area.

In general, an attainment demonstration SIP includes a modeling analysis showing how an area will achieve the standard by its attainment date and the emission control measures necessary to achieve attainment. The attainment demonstration SIPs must include motor vehicle emissions budgets for transportation conformity purposes. Transportation conformity is a process required by Section 176(c) of the Act for ensuring that the effects of emissions from all on-road sources are consistent with attainment of the standard. Ozone attainment demonstrations must include the estimates of motor vehicle VOC and NO_X emissions that are consistent with attainment, which then act as a budget or ceiling for the purposes of determining whether transportation plans, programs, and projects conform to the attainment SIP. Refer to Section II.A.5 for more details.

What is the History and Time Frame for the State Attainment Demonstration SIP for BPA and How Is It Related to EPA Transport Policy?

The BPA area is classified as moderate and, therefore, was required to attain the 1-hour ozone standard of 0.12 parts per million by November 15, 1996.

Attainment Demonstration SIPs were originally due November 1994. However, through a series of policy memoranda, the EPA recognized that States had not submitted these attainment demonstrations and were constrained to do so until ozone transport had been further analyzed. One policy memorandum addressing the issue of ozone transport is the Transport Policy issued by the EPA in July 1998. The Transport Policy is particularly relevant to BPA, which is downwind of the Houston/Galveston (HG) area, a severe-17 ozone nonattainment area with an attainment date of November 15, 2007.

On April 16, 1999, EPA proposed in the **Federal Register** to reclassify the BPA area to a serious ozone nonattainment area, and alternatively, proposed to extend the BPA area's attainment date if the State submitted a SIP timely and meeting the criteria of the 1998 Transport Policy (64 **Federal Register** 18864).

The BPA Attainment Demonstration SIP revision was adopted by the State on October 27, 1999 and submitted to the EPA under a cover letter from the Governor dated November 12, 1999. This submittal was termed by the State as "Phase I" of their NO_X rulemaking activities. The State submitted a revision to their SIP dated April 25, 2000, as "Phase II" NO_X rules and controls needed for attainment.

In the BPA ozone attainment demonstration SIP reviewed here, the State does rely, in part, on regional and statewide NO_X emission reductions for Texas, including the upwind HG Area, the eastern half of the State of Texas, and States upwind of Texas (most importantly, Louisiana). In developing the attainment demonstration for BPA, the State makes the case that the 1998 Transport Policy is particularly relevant to BPA, which is downwind of the HG area, and that the BPA area is affected by transport from HG. If we approve of such a determination for BPA, the area would have until no later than November 15, 2007, the attainment date for HG, to attain the 1-hour ozone standard.

What is the Time Frame for Taking Action on the Attainment Demonstration SIP?

The State submitted the attainment demonstration SIP revisions and supporting documentation between November 1999 and April 2000. In today's **Federal Register**, EPA is proposing to approve the attainment demonstration SIP for the BPA area. The anticipated schedule includes a 30-day public comment period. The EPA cannot finalize the proposed action upon the attainment demonstration SIP unless and until we have fully approved all of the control measures relied upon in the State's attainment demonstration SIP for the BPA area and the control measures required by the Act for a moderate area such as the BPA area. The EPA intends to complete final rulemaking on all of those required control measures by early spring 2001. We are acting upon those measures in separate **Federal Register** rulemaking notices. The EPA intends to have the Regional Administrator sign a final rulemaking on the attainment demonstration SIP and the attainment date extension for the BPA Area in late April, 2001. The final rule would be published in the **Federal Register** following Regional Administrator signature. The Texas Natural Resource Conservation Commission (TNRCC) submitted an enforceable commitment in the April 2000 SIP submittal to perform a mid-course review (including evaluation of all modeling, inventory data, and other tools and assumptions used to develop this attainment demonstration). The TNRCC committed that it will submit a mid-course review SIP revision, with recommended mid-course corrective actions, to the EPA by May 1, 2004.

B. Components of a Modeled Attainment Demonstration

The EPA provides guidance (*Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS,* EPA–454/B–95–007, June 1996) that States may rely on a modeled attainment demonstration supplemented with additional evidence to demonstrate attainment. To have a complete modeling demonstration submission, States should have submitted the required modeling analyses and identified any additional evidence that EPA should consider in evaluating whether the area will attain the standard. Additional components are discussed below.

What EPA Guidelines Apply to the Attainment Demonstration Submittals?

The following documents, among others, contain EPA's guidelines affecting the content and review of ozone attainment demonstration submittals:

1. *Guideline for Regulatory Application of the Urban Airshed Model,* EPA–450/4–91–013, July 1991. Web site: *http://www.epa.gov/ttn/scram/* (file name: "UAMREG").

2. Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources (Revised) (1992);

3. *Guidance on Urban Airshed Model (UAM) Reporting Requirements for Attainment Demonstrations,* EPA–454/R–93–056, March 1994. Web site: *http://www.epa.gov/ttn/scram/* (file name: "UAMRPTRQ").

4. User's Guide to MOBILE5 (Mobile Source Emission Factor Model), May 1994;

5. Memorandum, "Ozone Attainment Dates for Areas Affected by Overwhelming Transport," from Mary D. Nichols, Assistant Administrator for Air and Radiation, Environmental Protection Agency, September 1994;

6. Memorandum, "Ozone Attainment Demonstrations," from Mary D. Nichols, Assistant Administrator for Air and Radiation, March 2, 1995. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html.*

7. *Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS,* EPA–454/B–95–007, June 1996. Web site: *http://www.epa.gov/ttn/scram/* (file name: "O3TEST").

8. Memorandum, "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM10 NAAQS," from Richard Wilson, Office of Air and Radiation, December 29, 1997. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html.*

9. Memorandum, "Extension of Attainment Dates for Downwind Transport Areas," from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, July 16, 1998.

10. Memorandum, "Use of Models and Other Analyses in Attainment Demonstrations for the 8-Hour Ozone NAAQS (Draft)", 1998.

11. Memorandum, "Guidance on Motor Vehicle Emissions Budgets in One-Hour Ozone Attainment Demonstrations," from Merrylin Zaw-Mon, Acting Director of the Regional and State Programs Division, November 3, 1999. Webb site: www.epa.gov/oms/transp/conform/nov3guid.pdf.

12. Memorandum, "Guidance on the Reasonably Available Control Measures

(RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas," from John S. Seitz, Director of Office of Air Quality Planning and Standards, November 30, 1999.

13. Draft Memorandum, "1-Hour Ozone NAAQS—Mid-Course Review Guidance," from John Seitz, Director, Office of Air Quality Planning and Standards.

What are the Modeling Requirements for the Attainment Demonstration?

For purposes of demonstrating attainment under section 182(b), the General Preamble provides that a State may rely upon EPA's modeling guidance. EPA's modeling guidance provides for the use of photochemical grid modeling and additional information. The photochemical grid model is set up using meteorological conditions conducive to the formation of ozone in the nonattainment area and its modeling domain, as defined below. Emissions for a base year are used to evaluate the model's ability to reproduce actual monitored air quality values. Following validation of the modeling system for a base year, emissions are projected to an attainment year to predict air quality changes in the attainment year due to the emission changes, which include growth up to and controls implemented by the attainment year. A modeling domain is chosen that encompasses the nonattainment area. Attainment is demonstrated when all predicted ozone concentrations inside the modeling domain are at or below the ozone standard or an acceptable upper limit above the standard under certain conditions provided in EPA's 1996 guidance. When the predicted concentrations are above the standard or an upper limit using the 1996 guidance criteria, EPA's 1996 guidance provides for the use of an optional weight-of-evidence determination which incorporates other analyses, such as air quality and emissions trends, to address uncertainty inherent in the application of photochemical grid models. This latter approach may be used under certain circumstances to support a demonstration of attainment.

EPA guidance identifies the features of a modeling analysis that are essential to obtain credible results. First, the State develops and implements a modeling protocol. The modeling protocol describes the methods and procedures to be used in conducting the modeling analyses and provides for policy oversight and technical review by individuals responsible for developing or assessing the attainment demonstration (State and local agencies, EPA). Second, for purposes of developing the information to put into the model, air pollution days, *i.e.*, days in the past with high ozone concentrations exceeding the standard, are considered by EPA to be representative of the ozone pollution problem for the nonattainment area. Third, identification of the appropriate dimensions of the area to be modeled, *i.e.*, the modeling domain size, is an important criterion. A domain larger than the designated nonattainment area reduces uncertainty in the boundary conditions as does including any large upwind sources just outside the nonattainment area. In general, the domain is considered the local area where control measures are most beneficial to bring the area into attainment. Alternatively, a much larger modeling domain may be established, addressing the impacts of both local and regional emission control measures on a number of ozone nonattainment areas. In both cases, the attainment determination is based on the review of ozone predictions within the local area where control measures are most beneficial to bring the area into attainment (referred to as the local modeling domain). Fourth, determination of the grid resolution is an important criterion. The horizontal and vertical grid resolutions in the model can affect significantly the modeled results of dispersion and transport of emission plumes. Artificially large grid cells (too few vertical layers and horizontal grids) may dilute concentrations and may not properly consider impacts of complex terrain, complex meteorology, and land/water interfaces. Fifth, meteorological and emissions data that describe atmospheric conditions and emissions inputs reflective of the selected high ozone days are generated. Finally, verification that the modeling system is properly simulating the chemistry and atmospheric conditions through diagnostic analyses and model performance tests (generally referred to as model validation) provides confidence in the performance. Once these steps are satisfactorily completed, the model is ready to be used to generate air quality estimates to support an attainment demonstration.

The modeled attainment test compares model predicted 1-hour daily maximum ozone concentrations in all grid cells for the attainment year to the level of the ozone standard. A predicted peak ozone concentration above 124 ppb indicates that the area is expected to exceed the standard in the attainment year. This type of test is often referred to as an exceedance test. The EPA's June 1996 guidance recommends that States use either of two exceedance tests for the 1-hour ozone standard: A deterministic test or a statistical test.

Under the deterministic test the State compares predicted 1-hour daily maximum ozone concentrations for each modeled day (the initial, "ramp-up" days for each episode are excluded from this determination) to the attainment level of 124 ppb. If none of the predictions exceed 124 ppb, the test is passed.

The statistical test takes into account the fact that the form of the 1-hour ozone standard allows exceedances. If, over a 3 year period, the area has an average of 1 or fewer ozone standard exceedances per year at any monitoring site, the area is not violating the standard. Thus, if the State models a severe day (considering meteorological conditions that are very conducive to high ozone levels and that should lead to fewer than 1 exceedance per year at any location in the nonattainment area and in the modeling domain over a 3 year period), the statistical test provides that a prediction above 124 ppb up to a certain upper limit may be consistent with attainment of the standard. (The form of the 1-hour ozone standard allows for up to three readings above the standard over a three-year period before an area is considered to be in violation.)

The acceptable upper limit above 124 ppb is determined by examining the size of exceedances at monitoring sites which meet or attain the 1-hour standard. For example, a monitoring site for which the 4 highest 1-hour average concentrations over a 3 year period are 136 ppb, 130 ppb, 128 ppb, and 122 ppb is attaining the standard since there are no more than 3 exceedences at any one monitor over a 3-year period. To identify an acceptable upper limit, the statistical likelihood of observing ozone air quality exceedances of the standard of various concentrations is equated to the severity of the modeled day. The upper limit generally represents the maximum ozone concentration level observed at a location on a single day and it would be the only reading above the standard that would be expected to occur no more than an average of once a year over a 3 year period. Therefore, if the maximum ozone concentration predicted by the model is below the acceptable upper limit, in this case 136 ppb, then EPA might conclude that the modeled attainment test is passed. Generally, exceedances well above 124 ppb are very unusual at monitoring sites meeting the standard. Thus, these upper

limits are rarely substantially higher than the attainment level of 124 ppb.

What are the Additional Analyses That May Be Considered When the Modeling Fails To Show Attainment?

When the modeling does not conclusively demonstrate attainment, additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with modeling and its results. For example, there are uncertainties in some of the modeling inputs, such as the meteorological and emissions data bases for individual days and in the methodology used to assess the severity of an exceedance at individual sites. The EPA's 1996 guidance recognizes these limitations and provides a means for considering other evidence to help assess whether attainment of the standard is likely. The process by which this is done is called a weight-of-evidence determination.

Under a weight-of-evidence determination, the State can rely on and EPA will consider factors such as: Model performance and results, episode selection, other modeled attainment tests, *e.g.*, relative reduction factor analysis; other modeled outputs, *e.g.*, changes in the predicted frequency and pervasiveness of exceedances and predicted changes in the design value; actual observed air quality trends; estimated emissions trends; analyses of air quality monitored data; the responsiveness of the model predictions to further controls; and, whether there are additional control measures that are or will be approved into the SIP but were not included in the modeling analysis. This list is not an exhaustive list of factors that may be considered and these factors could vary from case to case. The EPA's 1996 guidance contains no limit on how close a modeled attainment test must be to passing to conclude that other evidence besides an attainment test is a sufficiently compelling case for attainment. However, the further a modeled attainment test is from being passed, the more compelling the weight-of-evidence needs to be.

The EPA's 1996 guidance also recognizes a need to perform a mid-course review as a means for addressing uncertainty in the modeling results. Because of the uncertainty in long term projections, EPA believes a viable attainment demonstration that relies on weight of evidence should contain provisions for periodic review of monitoring, emissions, and modeling data to assess the extent to which refinements to emission control measures are needed.

C. Framework for Proposing Action on the Attainment Demonstration SIP

Besides the Modeled Attainment Demonstration, What Other Issues Must be Addressed in the Attainment Demonstration SIP?

In addition to the modeling analysis and weight-of-evidence determination demonstrating attainment, the EPA has identified the following key elements which must be present in order for EPA to approve the 1-hour attainment demonstration SIP under the criteria of the 1998 Transport Policy.

1. Clean Air Act measures and other measures relied on in the modeled attainment demonstration State Implementation Plan. To receive final approval of the BPA attainment demonstration SIP under the 1998 Transport Policy, the State must have adopted the emission control measures required under the Act for the area's classification or must have established negative source declarations for the source categories for which the area has no sources that are subject to the Clean Air Act area's classification requirements for such sources. All required emission controls must be implemented as expeditiously as practicable but no later than prior to the beginning of the ozone season (year round in the BPA area, 40 CFR Part 58—Texas Air Quality Control Region 10) in the area's attainment year to assure attainment of the ozone standard in the attainment year.

The attainment demonstration must incorporate the emission impacts of, and the SIP submittal must address the rule development for, any additional emission control measures needed to achieve attainment. The rules for these emission controls relied upon in the attainment demonstration must also have been adopted by the State and approved by EPA before the EPA can finally approve the attainment demonstration SIP. The emission controls for these sources must be implemented as expeditiously as practicable.

Table 1 presents a summary of the Clean Air Act requirements that need to be met for a moderate ozone nonattainment area for the 1-hour ozone standard. These requirements are specified in sections 182(b) and 182(f) of the Act. Information on additional measures that Texas has adopted and relied on in the attainment demonstration SIP for the BPA area is not shown in this table, but is addressed later in this proposed rule.

TABLE 1.—CAA REQUIREMENTS FOR MODERATE NONATTAINMENT AREAS

- New Source Review (NSR) regulations for VOC and NO_X, including an offset ratio of 1.15:1 and a major VOC and NO_X source size cutoff of 100 tons per year (TPY).
- Reasonably Available Control Technology (RACT) for VOC and NO_X.
- 15 percent Rate-Of-Progress (ROP) plan for VOC through 1996.
- 1990 baseline emissions inventory for VOC and NO_X.
- Periodic emissions inventory and source emission statement regulations.
- Vehicle inspection and maintenance (I/M) program.[a]

[a] A vehicle I/M program would normally be listed as a requirement for a moderate ozone nonattainment area. However, the Federal I/M Flexibility Amendments of 1995 determined that urbanized areas with populations less than 200,000 for 1990 (such as Beaumont/Port Arthur) are not mandated to participate in the I/M program (60 FR 48033, September 18, 1995).

2. Motor vehicle emissions budgets. An attainment demonstration SIP must establish the motor vehicle emissions budget that is the maximum level of on-road emissions that can be produced in the attainment year. The attainment demonstration SIP must also demonstrate that this emissions level, when considered with emissions from all other sources, is consistent with attainment. The motor vehicle emissions budgets must meet certain criteria which are listed in the Transportation Conformity Rule (40 CFR Part 93 Subpart A Section 93.118) and all pertinent SIP requirements before the budgets can be approved as part of the attainment demonstration SIP.

D. Criteria for Attainment Date Extensions

What is EPA's Policy With Regard to an Ozone Attainment Date Extension?

The EPA's policy regarding an extension of the ozone attainment date for the BPA area is fully addressed in EPA's initial notice of proposed rulemaking dated April 16, 1999 (64 FR 18864). In the April 16, 1999, notice, the EPA proposed to reclassify the BPA area to a serious ozone nonattainment area, but also provided notice of the area's potential eligibility for an attainment date extension based on a July 16, 1998, EPA guidance memorandum. The specifics of the attainment date policy are repeated below for clarity.

On July 16, 1998, a guidance memorandum entitled "Extension of

Attainment Dates for Downwind Transport Areas" was issued by the EPA. That memorandum included EPA's interpretation of the Act regarding the extension of attainment dates for ozone nonattainment areas that have been classified as moderate or serious for the 1-hour ozone standard and which are downwind of areas that have interfered with their ability to demonstrate attainment of the ozone standard by dates prescribed in the Act. That memorandum stated that the EPA will consider extending the attainment date for an area or a State that:

(1) Has been identified as a downwind area affected by transport from either an upwind area in the same State with a later attainment date or an upwind area in another State that significantly contributes to downwind ozone nonattainment;

(2) Has submitted an approvable attainment demonstration with any necessary, adopted local measures and with an attainment date that shows it will attain the 1-hour standard no later than the date that the reductions are expected from upwind areas under the final NO_X SIP call (63 FR 57356, October 27, 1998; compliance dates revised by Court order August 30, 2000) and/or the statutory attainment date for upwind nonattainment areas, (*i.e.*, assuming the boundary conditions reflecting those upwind emission reductions);

(3) Has adopted all applicable local measures required under the area's current classification and any additional measures necessary to demonstrate attainment, assuming the reductions occur as required in the upwind areas;

(4) Has provided that it will implement all adopted measures as expeditiously as practicable, but no later than the date by which the upwind reductions needed for attainment will be achieved.

Once an area receives an extension of its attainment date based on ozone/precursor transport impacts, the area is no longer subject to reclassification to a higher ozone nonattainment classification for failure to attain the ozone standard by the original attainment deadline. If the BPA area is granted an attainment date extension, it would no longer be subject to a reclassification to serious nonattainment for ozone and no longer subject to the additional emission control requirements that would result from the reclassification to serious nonattainment, for failure to attain by the original November 15, 1996, deadline.

Texas has requested an extension of the attainment date for the BPA nonattainment area in conjunction with the ozone attainment demonstration submittals. The ozone attainment demonstration SIP uses November 15, 2007 as the ozone attainment date. The chosen 2007 attainment date reflects the statutory attainment date for the HG area, as the BPA is downwind of the HG area.

II. Technical Review of the Submittals

A. Summary of the State Submittals

1. General Information

When were the ozone attainment demonstration State Implementation Plan revisions submitted to the Environmental Protection Agency? The TNRCC made two submittals to us, which in whole or in part concern the ozone attainment demonstration, and an extension of the attainment date for the BPA ozone nonattainment area:

(a) A November 12, 1999, submission from the Governor of Texas, which included the following:

A. Regulations and associated documentation for the control of VOC emissions from batch process operations and industrial wastewater treatment processes, intended to fulfill the remaining VOC RACT requirements of section 182(b)(2) of the Act for the BPA moderate nonattainment area;

B. A regulation and associated documentation for the control of NO_X emissions from lean burn engines, intended to meet the remaining NO_X RACT requirements of section 182(b)(2) of the Act for the BPA moderate nonattainment area;

C. A Photochemical Modeling demonstration and its accompanying control strategy to bring the BPA area into attainment of the one-hour ozone standard as expeditiously as practicable, but no later than 2007;

D. A 2007 motor vehicle emissions budget for transportation conformity;

E. Emissions growth estimates and an emissions inventory; and,

F. An enforceable commitment to submit additional rules to us in accordance with its modeled control strategy.

(b) An April 25, 2000, submission from the Governor of Texas, which included the following:

A. NO_X emissions specifications in the BPA area for electric utility boilers, industrial, commercial or institutional boilers, and certain process heaters, relied upon for attainment in the BPA area;

B. Additional regional rules and orders relied upon for demonstrating attainment in the BPA area;

C. A Revised Photochemical Modeling demonstration and emissions growth estimates; and,

D. An enforceable commitment to perform a mid-course review with submittal to the EPA by May 1, 2004.

For the purposes of this action, we are reviewing only the modeling, weight-of-evidence support, the transport analysis, MVEB, emissions inventory, the approved VOC 1990 baseline emission inventory regarding major VOC sources in the BPA area, and the mid-course enforceable commitment.

When were the submittals addressed in public hearings, and when were the submittals formally adopted by the States? The TNRCC held a public hearing on the November submittal on August 9, 1999. This submittal was formally adopted by the TNRCC on October 27, 1999. The TNRCC held ten public hearings on the April submittal; a public hearing was held in the BPA area on January 31, 2000. The TNRCC formally adopted the April 25, 2000, submittal on April 19, 2000.

2. Modeling Procedures and Input Data

What modeling approach was used in the analyses? The State of Texas conducted the modeling analyses and other analyses, including weight-of-evidence analyses, used to support the attainment demonstration. The modeling approach is documented in both Texas' November 12, 1999, ozone attainment demonstration (Phase I) and the April 25, 2000, supplemental ozone attainment demonstration (Phase II) submittals.

The TNRCC used the Comprehensive Air Quality Model with Extensions (CAMx) photochemical grid model (which is based on well-established treatments of advection, diffusion, deposition, and chemistry similar to the UAM photochemical grid model) to conduct the SIP attainment demonstration modeling.

TNRCC used a relatively large modeling domain to capture the influence of inter-urban transport between Lake Charles, Louisiana (LC), the BPA area, and the HG area. The modeling domain covers most counties in central and east Texas, including the ozone nonattainment counties of Harris, Jefferson, Orange, Chambers, Hardin, Liberty, Montgomery, Waller, Brazoria, Galveston, and Fort Bend counties, and parts of three parishes in Louisiana.

How were high ozone episodes evaluated for modeling selection? In selecting the episodes to be modeled, the State followed the guidance provided by the EPA. The July 1991 ozone modeling guidance, "Guideline for Regulatory Application of the Urban

Airshed Model", recommends that episodes for modeling be selected to represent different meteorological regimes observed to correspond with ozone exceeding the standard. The policy represents EPA's view that both stagnation and transport conditions should be examined, and a minimum of 3 primary episode days should be modeled. Primary episode days are those days for which ozone concentrations exceeding the standard were monitored in the area. For a more complete description of episode selection criteria see the TSD for this document.

What high ozone periods were modeled? TNRCC selected two episodes for BPA's attainment demonstration modeling purposes. They were the August 31-September 2, 1993, and September 6–11, 1993, episodes. Details of the rationale for inclusion of these two episodes can be found in the State's BPA attainment demonstration SIP submittal and the TSD for this document.

The August 31 to September 2, 1993, episode, in EPA's view, features representative wind patterns and high monitored ambient ozone concentration levels. This particular meteorological regime is highly correlated with rather severe monitored ozone exceedances. Transport between HG and BPA is indicated during this episode. The highest monitored reading in the BPA area for this period was 139 ppb on September 2, 1993.

The September 6–11, 1993, episode is characterized by having high to moderately high daily monitored peak ozone concentrations over the entire large domain. The highest monitored reading in the BPA area for this period was 141 ppb on September 10, 1993. As noted, the high ozone episodes TNRCC selected and modeled cover more than 3 primary episode days and cover the types of meteorology observed along with high ozone in the BPA area. For a more complete description of episode selection see the TSD for this document.

What input data systems and analyses were used as part of the combined modeling system? The following input data systems and analyses were used by the State:

Emissions: TNRCC developed two major types of modeling emission inventories, one type representing the actual emissions that occurred during the two chosen specific episode periods, and another type representing the projected emissions expected to occur at the attainment date for the HG area (*i.e.*, 2007). The episode-specific modeling emissions, termed the "base case," were used to evaluate the model's reliability in replicating the ozone exceedances that occurred during the two chosen episodes. The 2007 projected modeling emissions, termed the "future case," were used to estimate the overall level of reductions in VOC and NO_X needed to achieve attainment. For a more complete description of how these base case and future case inventories were developed, see the TSD for this document.

Meteorology: TNRCC developed the meteorological inputs to CAMx using the System Application International Mesoscale Model (SAIMM), which is a prognostic mesoscale meteorological model with four dimensional data assimilation (4DDA). EPA is proposing to accept TNRCC's use of SAIMM upon the technical justification that it adequately replicates the land-sea breeze and inter-urban area transport features which appear to be typical of conditions associated with ozone exceedances along the Texas Gulf coast.

Chemistry: Atmospheric chemistry within the modeling grid system was simulated using the Carbon Bond-Version IV model developed by the EPA.

Boundary and Initial Conditions: EPA's modeling Guidelines recommend the use of the ROM photochemical model on a regional basis for developing boundary conditions. TNRCC in collaboration with ENVIRON conducted a regional modeling application to determine boundary and initial conditions for the COAST modeling domain. This regional modeling domain covered a rather large area of the southeastern United States, extending from San Angelo, Texas on the west to the Georgia-Alabama border on the east, and from south of Brownsville on the south to the Oklahoma-Kansas border on the north. EPA considers this modeling framework used by TNRCC for the development of boundary and initial conditions to be superior to ROM, since it encompasses many improvements in model formulation over ROM. Using the OTAG model performance criteria as a gauge for the technical acceptability of this Texas regional modeling, EPA proposes to accept the TNRCC/ENVIRON regional modeling application as producing acceptable results upon which to derive initial and boundary conditions for the two COAST modeling episodes.

What procedures and sources of projection data were used to project the emissions to future years? In general the projected 2007 modeling emissions inventory (future case) was derived from the base case modeling emissions inventory (base case) by applying growth and control factors to the various source categories.

For the growth of stationary point sources, TNRCC used survey data of point source startups and shutdowns that occurred from 1990 to 1996 to account for banking emissions, startups and shutdowns. As recommended, TNRCC used procedures developed by EPA, which take into account the survey data and the required offsets for nonattainment New Source Review purposes, to develop growth rates for the modeling domain.

For the growth of the area and off-road mobile source emissions, TNRCC used a combination of growth factors derived from a model developed specifically for Texas by Regional Economic Modeling Inc. (REMI). The Texas model is an adaptation of the Emissions Growth Analysis System (EGAS), which is the standard EPA method of developing growth factors. The EPA is proposing to find the Texas model acceptable for projecting the growth of the area and off-road mobile source emissions in the BPA area modeling.

TNRCC developed the projected 2007 on-road mobile source emissions using much of the same procedures as used for the base case on-road mobile source emissions, for most of the counties. For these counties, the projections were based upon the results of the Travel Demand Model (TDM)(a Texas Department of Transportation—TxDOT—travel demand model) and additional special survey data (local travel counts, etc.), which provided estimates of the Vehicle Miles Traveled (VMT) mix and hourly VMT fractions. The TDM modeling used a projected 2007 roadway network. The results of this TDM modeling were coupled with the results of MOBILE5a, the EPA-approved mobile sources model. However, some counties in the COAST modeling domain were not covered by the TDM. For this smaller group of counties, TNRCC did not develop the projected 2007 on-road mobile source emissions in the same manner as discussed above. In these cases, TNRCC used regional adjustment factors based upon: (1) the difference between MOBILE5a runs for model years 1993 and 2007 that were calculated above for those counties in the COAST modeling domain that were covered by the TDM, and (2) the difference between 1993 and 2007 VMT for those same TDM covered counties from the Highway Performance Monitoring System (HPMS) estimates provided by TxDOT. The adjustment factors were calculated by averaging county-specific ratios. Then, similar to how MOBILE5a was run for the TDM

covered counties, MOBILE5a was run for the non-TDM covered counties with the same input setup used for the 1993 episodic on-road mobile source emissions, only changing the model year to 2007. EPA is proposing to accept this approach for projecting the future 2007 on-road mobile source emissions in the domain.

TNRCC used the same biogenic emissions developed for the 1993 episodic inventory (*i.e.*, BIOME generated) for the future case. TNRCC assumed biogenic emissions would remain approximately constant between the years 1993 and 2007, and the EPA proposes to accept this assumption.

The above emission projection procedures are acceptable to the EPA. The emission projection procedures are explained in greater detail in the TSD.

3. Modeling Results

How did the State validate the photochemical modeling results? The State conducted a number of statistical analyses to compare the modeling system's ozone predictions to observed peak ozone concentrations for the base period. Using the preliminary base period emissions and meteorological inputs, the State derived statistics covering: unpaired peak accuracy; normalized bias; and, gross error of data pairs for each of the modeled high ozone episode days. These results were compared to acceptable accuracy ranges in the EPA guidance. With a few exceptions, the modeling results for the selected two episodes are in agreement with EPA-specified criteria.

Table 2 presents a summary of the model performance statistics for the BPA ozone nonattainment area. The days August 31, September 6 and 7, in EPA's view as expressed in the guidance, can be excluded for use in the analyses as these were ramp-up days for the modeling (the ramp-up days are expected to exhibit poor model performance and are generally dropped from further consideration). These data were taken from Appendix K of the State's submittal.

TABLE 2.—MODEL OZONE PERFORMANCE STATISTICS BPA NONATTAINMENT AREA

	Aug 31–Sept 2 1993 Episode		September 1993 Episode			
	9/1	9/2	9/8	9/9	9/10	9/11
Measured Peak (ppb)	105	139	113	110	141	116
Modeled Base Yr Peak(ppb)	96	113	165	139	155	162
Normalized Bias (%)	4.1	10.4	27.4	13.3	10.1	11.8
Gross Error (%)	14.1	16.9	30.8	16.1	18.2	17.9
Unpaired Peak Accuracy (%)	8.7	18.5	24.3	16.1	1.0	24.0

The model performance statistics can be compared to EPA's recommended (July 1991, *Guideline for Regulatory Application of the Urban Airshed Model*) acceptable model performance statistics:

Normalized Bias: ±5 to 15 percent
Gross Error: 30 to 35 percent
Unpaired Peak Accuracy: ±15 to 20 percent.

It can be seen from Table 2 above that the modeling system adequately performs within acceptable performance ranges for the majority of the performance criteria. The model does under predict the peak ozone levels on the days of September 1 and 2, 1993. The model over predicts ozone peaks on the other days, particularly on September 8, 9, and 11, 1993. The model over predicts an ozone peak but it is fairly close to that measured on the September 10, 1993, day. EPA is proposing that the modeling system is performing adequately and in an acceptable manner to support emission control strategy considerations.

The State used the September 6–11 ozone episode for its attainment demonstration. The model performance is in reasonable agreement with EPA performance specifications in the BPA area for three of the four days of this episode, with the exception being September 8, 1993. However, since this date had no monitored exceedances in the BPA area, it is EPA's proposed technical position that the September 8, 1993, day of the selected episode is not required for attainment demonstration control strategy evaluation for the BPA SIP.

A number of other tests and considerations were also given to the overall model performance evaluation. The performance evaluation considered various items of statistical and graphical information, diagnostic and sensitivity analyses, and graphical performance measures. It is EPA's technical position that these tests and considerations show acceptable performance of the modeling system for the chosen base period, and that September 10, 1993 shows good agreement between modeled and monitored data.

For a more detailed description of the validation of the photochemical modeling results, and the procedures to determine the controlling episode and day, see the TSD for this document.

How was potential transport from the HG area addressed? TNRCC demonstrated the impact of ozone and ozone precursor transport from the upwind HG nonattainment area upon the BPA nonattainment area through the August 31 to September 2nd, 1993 episode. TNRCC applied the CAMx model using the same set of air quality and meteorological inputs previously used in the base case simulation, but with an emissions data set in which anthropogenic (man-made) emissions from the 8-county HG nonattainment area were eliminated. As a result, the modeled base peak ozone is reduced by as much as 10–30 ppb on most modeled days in the BPA area. Jefferson and Hardin counties are influenced more strongly by HG transport than Orange County, which in EPA's opinion, makes sense given their greater proximity to the HG nonattainment area. However, on some days, the modeled peak ozone level is not greatly diminished by the exclusion of the HG contribution. This does not mean, in EPA's opinion, that the BPA area is not affected by transport from the HG area. It is EPA's proposed technical position that for some days, the BPA area is affected by transport from the HG area. On other days, the BPA area is affected by ozone emissions generated within the BPA area itself.

In addition, TNRCC hired Dr. Thomas W. Sager of the University of Texas (UT) to conduct an analysis of back trajectories of air parcels coming into the BPA area and evaluate the effect of HG-only strategies' impact in BPA. He conducted a statistical study that evaluated back trajectories that terminated in BPA. He evaluated back trajectories on both high ozone concentration and low ozone concentration days for the BPA area. Dr. Sager used the HYSPLIT (HYbrid

Single-Particle Lagrangian Integrated Trajectory) model for these studies. The HYSPLIT model is the newest version of a complete system for computing simple air parcel trajectories to complex dispersion and deposition simulations.

Based on the results of the study, Dr. Sager showed that back trajectories from the BPA area that pass near the HG area result in higher average ozone concentration levels in BPA, and that the closer the trajectory came to HG, the higher the ozone concentration levels in BPA. However, he did not show that transport from HG was the sole cause of high ozone concentrations in the BPA area. It is EPA's position that his study supports the above modeling results, that transport is a reason for higher ozone concentration levels in the BPA area on some days. On other days, the high ozone concentration levels in the BPA area are not due to transport, but due to locally-generated ozone or ozone precursor emissions.

In conclusion, we are proposing that Texas has demonstrated that during some BPA exceedances, ozone levels are affected by emissions from the HG area, and that the HG area emissions affect BPA's ability to meet attainment of the 1-hour ozone standard.

What were the ozone modeling results for the base period and for the future attainment period? The ozone modeling system was run to simulate ozone concentrations on selected high ozone days in the 1993 episodes using emissions for those days, and a future year (2007). The resulting BPA area ozone peaks for 1993 and 2007 are given in Table 3. These modeled ozone peaks reflect the 2007 emissions and modeling results for the September 6–11 episode as documented by Texas in its April 25, 2000 submittal (September 6, 7, and 8 omitted as detailed in previous discussions), taking into consideration the emission control strategies discussed later.

TABLE 3.—PEAK OBSERVED AND MODELED OZONE CONCENTRATIONS (PPB) IN THE BPA OZONE NONATTAINMENT AREA

Period	September 9–11		
Date	9/9	9/10	9/11
1993 Peak Observed	110	141	116
1993 Base Modeled	139	155	162
2007 Future Base Case Modeled	126	142	147
2007 Post-Control Modeled	115	132	140

Do the modeling results demonstrate attainment of the ozone standard? As noted in Table 3, the 1-hour maximum predicted ozone concentration on the controlling day (September 10—the day during the selected episode with the maximum observed ozone concentration for the BPA area) over the BPA area is 132 ppb.

The modeling by itself does not conclusively demonstrate attainment of the standard, but its results are close enough to attainment to warrant the consideration of weight of evidence arguments that support the demonstration of attainment. The TNRCC conducted several weight of evidence analyses (please see next sections for further details) to add additional evidence that the demonstration shows that BPA will attain the standard by 2007 with the planned emission controls.

What weight-of-evidence analyses and determinations are used to support the modeled attainment demonstration? A weight-of-evidence determination includes an assessment of the confidence one has in the modeled results. The more extensive and credible the corroborative information, the greater the influence it has in how to view deviations from the modeled attainment demonstration. As discussed in the June 1996 EPA guidance, *Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS*, the weight-of-evidence given to model results depends on the following factors: (1) Model performance; (2) confidence in the underlying data bases; (3) length of the projection period; and (4) how close the results come to demonstrating attainment for all receptor sites and times modeled (see Table S.1. of the June 1996 guidance for a complete list of factors affecting weight-of-evidence determinations and acceptance of model results nearly passing the attainment tests).

EPA's draft guidance document entitled "Use of Models and Other Analyses in Attainment Demonstrations for the 8-Hour Ozone NAAQS" (Draft) (1998), addresses additional weight-of-evidence approaches, one of which considers methods relating modeled ozone concentrations to monitored design values for a particular area. TNRCC relied on this concept (called the future design value) as well as the criteria from the 1996 guidance. All predicted future design values for the attainment year, in EPA's view, should be less than 125 ppb to support the attainment demonstration.

Texas relied on the future design value calculations, Design Value trends, modeling metrics evaluating spatial and temporal changes in ozone extent, and results of alternative modeling scenarios including 30% point source NO_X emissions reductions from grandfathered non-electric generating facilities (EGFs) to develop weight of evidence for the BPA 1-hour ozone attainment demonstration SIP.

The State analyzed, and the EPA considered, the following factors and data in aggregate in assessing whether the State has provided sufficient evidence that corroborates further the attainment demonstration. The following is a summary of the analyses. Reference the BPA SIP and the TSD for this document for details of the analyses. A historical account of exceedance days is provided in the TSD to this proposed rulemaking.

Future Design Value Calculations: The TNRCC performed future design value calculations. Since episodes chosen for the BPA attainment demonstration occurred during 1993, TNRCC used monitoring data collected from 1992 to 1994 in the BPA nonattainment area, as discussed in the 1998 EPA draft guidance, using monitoring data from the 3 year time frame around the modeled episodes. They used reading from both Southeast Texas Regional Planning Commission (SETRPC) and TNRCC monitors in the BPA area from that time period.

To calculate the future design values, TNRCC developed a ratio of the predicted future case model results (including the control scenarios) to that of the original base case modeling results, and then multiplied these ratios by the 1992–1994 design value (DV_C) to obtain a future design value (DV_F). This technique demonstrates in EPA's opinion, that although the modeled maximum concentration in the BPA area for the 2007 Control Scenario is 132

ppb on September 10th, the calculated future design value is 115.4 ppb, which is less than the 1-hour standard of 125 ppb. This provides in EPA's view, additional support that the BPA area will attain the standard in 2007.

Design Values Trends: As a part of weight-of-evidence, TNRCC also analyzed the historic air quality in the BPA ozone nonattainment area for the period of 1975 to 1999. The analyses demonstrate that the area's ozone design value exhibits a general decrease since 1995 (this can be seen on Figure 6.3–2 of the April 25, 2000 BPA SIP submission). This downward trend is almost as great for the period 1991–1999 as for the earlier period. TNRCC believes, and EPA proposes, that this long-term downward trend is likely to continue. In addition, TNRCC expects, and the EPA is proposing, that the air quality will keep improving due to substantial reductions in precursor emissions in both HG and BPA, due to both state and federal emission control requirements. This includes the impacts of the implementation of the NO_X RACT and beyond-RACT NO_X rules for the BPA area.

Spatial and Temporal Modeling Metrics: Another of the weight-of-evidence analyses that TNRCC included in the BPA SIP attainment demonstration is an analysis of metrics to assess the relative effectiveness of modeled strategies. This is in addition to comparing maximum concentrations between two or more modeled scenarios (i.e., 1993 base case, 2007 future case, etc.) These metrics include changes in the modeled area exceeding the standard and changes in the number of grid cell-hours exceeding the standard. For this analysis, TNRCC made a comparison between the initial September 6–11, 1993, base case and the 2007 future base case (with banked and shutdown emissions added back) and the final chosen rules control scenario. The results of this analysis show that even though the chosen control strategy does not drive each and every grid cell below 125 ppb, it does substantially change area and temporal extent of predicted ozone concentrations greater than 124 ppb. In particular, the changes in temporal/area extent for September 10th show that the number of grid cells greater than 124 ppb drops by 28 percent from the original 1993 base case to the 2007 base case. The 2007 post-control case then drops the values from the 2007 base case by a additional 82 percent. This represents an overall 87 percent improvement in ozone exceedence days for the 2007 post-control case as compared to the 1993 base case. This analysis, in EPA's technical opinion, indicates the State's NO_X control strategy demonstrates a dramatic improvement in predicted air quality over the original and future base case scenarios.

Alternative Modeling Scenarios: TNRCC also conducted alternative scenarios to include in their weight-of-evidence analyses. In the first scenario, shutdown and banked emissions were taken out of the future base case inventory. The results indicated that the future base case concentration declined from 146 ppb to 142 ppb. This would indicate an improvement in air quality if all banked emissions are not used. In another scenario, in-line with expectations from Senate Bill 766, as enacted in 1997 (which encourages non-EGF sources in attainment areas of Texas to acquire permits for their grandfathered units) TNRCC estimated that SB 766 would result in approximately a 30 percent decrease in emissions of NO_X from grandfathered non-EGF sources across Texas. TNRCC believes that these reductions will aid BPA in reaching attainment by reducing background concentrations of ozone and its precursors, which will in turn aid in lowering ozone concentrations in the nonattainment area. Details of the above alternative modeling scenarios are provided in the TSD to this document.

In addition to the above scenarios, an EPA proposed rule entitled "Control of Air Pollution from New Motor Vehicles: Proposed Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements", 65 FR 35430 (Friday, June 2, 2000) will reduce NO_X emissions from heavy-duty diesel engines. This rule, which was not included by the State in the control strategy modeling portion of the SIP, is to be phased in beginning in model year 2007. The rule will reduce NO_X to 98% of the uncontrolled level for these engines, adding to the weight-of-evidence analyses for attainment.

The EPA is proposing that the State's analyses of air quality and emission trends do provide additional support for the State's attainment demonstration. Progress in air quality improvement through recent periods is demonstrated and future progress in air quality improvement is shown. In addition, these analyses lend support to a regional NO_X reduction as a reasonable approach to achieving attainment of the ozone standard. EPA is proposing that based on the weight-of-evidence and the modeling, the control strategy should provide for attainment by November 15, 2007. EPA's proposed approval is based on a composite of the information, not on a single element of the "weight-of-evidence."

4. Emission Control Strategies

What emission control strategies were included in the attainment demonstration? The BPA Attainment Demonstration SIP relies on a combination of Federal measures, CAA statutory requirements, Regional measures, local controls in the BPA area, and projections of the level of control in the HG area based on enforceable commitments in the November 1999 SIP for the HG area.

Federal Measures: The TNRCC included the following federal measures in their Future Year Base Case.

(1) On-road mobile sources:

- Heavy-duty diesel standards.
- Federal motor vehicle control program.
- National low emission vehicles standards.
- Federal low sulfur gasoline.
- Tier II vehicle emission standards.

EPA believes that the projected growth rates and emissions reductions from the sources subject to the above federal measures were calculated correctly by the TNRCC.

(2) Off-road mobile sources:

- Heavy duty diesel standards.
- Locomotive standards.
- Compression ignition standards for vehicles and equipment.
- Spark ignition standards for vehicles and equipment.
- Commercial marine vessel standards.
- Recreational marine standards.

The EPA believes that the State correctly projected the growth rates and emissions reductions from sources subject to these federal measures.

CAA Statutory Requirements: The TNRCC included the following CAA Statutory Requirements in their Future Year Base Case.

- Phase II reformulated gasoline in H-G eight county nonattainment area
- Texas motorists' choice inspection and maintenance (I/M) program in Harris county

The EPA believes that the State correctly projected the growth rates and emissions reductions from sources subject to these CAA Statutory Requirements.

State/Regional Measures: The TNRCC included the following State Measures as state-wide or regional controls in their Future Year Base Case.

- Agreed orders with Alcoa, Inc. (formerly Aluminum Company of America) for their Milam facility, and the Eastman Chemical Company, Texas operations, for their facility near Longview, Texas.
- 50% Reductions at EGFs in Central and Eastern Texas.

- Low Reid Vapor Pressure (RVP) Gasoline in Eastern and Central Texas.
- Stage I vapor recovery at gas stations in Eastern and Central Texas.
- Water Heaters Rule in all of the State.

The EPA has already published actions on the above control measures in the **Federal Register**. EPA believes that the TNRCC correctly projected the growth rates for and the emissions reductions from these affected sources.

Local Measures: The TNRCC included the following additional State Measures as local (BPA) area controls in their Future Year Post-Control Case.

- Rich-Burn Internal Combustion Engines.
- Lean-Burn Internal Combustion Engines.
- Industrial/Utility Boilers.
- Process Heaters.
- Gas Turbines.
- Electric Utility Boilers (five electric utility power boilers in BPA).

For the above local measures, emission limits were assigned to categories of combustion units of the categories and sizes as listed in Table 4. Table 4, also, shows corresponding reductions in the NO_X emissions inventory from each control strategy. This strategy applies to major stationary sources of NO_X in BPA. EPA believes that the State correctly projected the growth rates for and the emissions reductions from these affected sources.

TABLE 4.—MODELED NO_X REDUCTIONS FROM SELECTED SOURCE CATEGORIES

Category	Maximum design heat input	NO_X emission limit	Percent change from 2007 future base
Electric utility boilers	All units	0.10 lb/MM Btu	−45
Industrial boilers [a]	>= 40 MM Btu/hr	0.10 lb/MM Btu	−58
Industrial process heaters	>= 40 MM Btu/hr	0.08 lb/MM Btu	−32
Gas turbines	> 10 MW	42 ppm	−27
Rich-burn engines [b]	300 hp	2 g/hp-hr	−82
Lean-burn engines [b]	300 hp	3 g/hp-hr	−73
Overall			−44%

[a] This reduction was not applied to boiler industrial furnace (BIF) units out of technical and economic considerations, based on special design and operational requirements for destruction of hazardous air pollutants by BIFs.
[b] The engine percent reductions represent reductions from engines required to reduce emissions, not the entire category.

The adopted NO_X emission limit of 0.10 lb NO_X/MMBtu applies to all five electric utility power boilers in BPA and represents approximately a 45% reduction in emissions from this source category. The adopted NO_X emission limit of 0.10 lb NO_X/MMBtu for industrial boilers and 0.08 lb NO_X/MMBtu for process heaters requires four refineries and 15 chemical plants which are major sources of NO_X in BPA to reduce their associated NO_X emissions by approximately 58% and 32%, respectively. Overall, the control case modeling reflects a point source NO_X reductions for BPA area sources of roughly 44%.

Table 5 provides the projected NO_X reductions for the 2007 attainment year afforded by the Federal and State rules.

TABLE 5.—NO_X REDUCTION ESTIMATES (PHASE I AND PHASE II RULES)

EPA-Issued Rules	2007 projected (tpd)	Reduction (tpd)
FMVCP, Tier I, NLEV, on-road HDD	35.61	6.4
Locomotive engines	5.24	1.89
Non-road HDD	28.42	7.73
Small engines	0.49	−0.48
Recreational marine engines	0.13	−0.10
EPA—Issued Rules Total	68.69	15.44
TNRCC—Issued Rules Total	170.51	75.09

The intent of the State's rules is to reduce NO_X emissions from major stationary sources in the BPA ozone nonattainment area. The adopted rules established an emission limitation for lean burn stationary combustion engines greater than 300 hp. Other adopted rules limit emissions of NO_X from power plants, industrial boilers, and process heaters. The rules will also lower the applicability threshold for boilers and process heaters to a rated input heat capacity of 40 MMBtu/Hr and above.

Lowering of the trigger limits and restricting emission specifications from combustion sources in the BPA area contributes significantly to ozone attainment. For a detailed analysis, section by section, of the TNRCC's adopted rules, see EPA's **Federal Register** notices with accompanying Technical Support Documents, and the SIP and its appendices.

Houston Measures: TNRCC committed to substantial emission reductions in the HG area in their November 1999 SIP submission.

These reductions included expanded I/M program, 90% point source reductions, and fuels measures. TNRCC has proposed these measures for adoption and enforceably committed to submitting the necessary adopted measures by the end of December, 2000.

Has the State adopted the selected emission control strategies and has the State adopted the emission control regulations needed to implement the emission control strategies? The State has adopted and submitted the emission control strategies and all associated

emission control regulations required for a moderate ozone nonattainment area and relied upon in the attainment demonstration modeling, but for the HG measures. See the previous Section, including Tables 4 and 5, for a listing of applicable State measures. Many, but not, all of these measures have been approved. EPA is proposing approval of the attainment demonstration SIP contingent upon SIP approval of all CAA required measures for a moderate area and other attainment measures (but for the HG measures) before final action on the BPA attainment demonstration SIP and request for an extension of the attainment date.

5. Motor Vehicle Emissions Budget

What is a motor vehicle emissions budget (MVEB) and why is it important? The MVEB is the level of total allowable on-road emissions established by a control strategy implementation plan or maintenance plan. In this case, the MVEB establishes the maximum level of on-road emissions that can be produced in the attainment year of 2007, when considered with emissions from all other sources, that meets the requirements of the SIP to demonstrate attainment. It is important because the MVEB is used to determine the conformity of transportation plans and programs to the SIP, as described by section 176(c)(2)(A) of the Act.

Did the State Establish Motor Vehicle Emissions Budgets? Texas has submitted motor vehicle emissions budgets for the 2007 attainment year for the BPA ozone nonattainment area. The emission budgets are shown in Table 6.

TABLE 6.—2007 ATTAINMENT MOTOR VEHICLE EMISSIONS BUDGETS

Pollutant	2007 tons/day
VOC	17.22
NO_X	29.94

The EPA is proposing to approve the MVEBs listed in Table 6.

B. Environmental Protection Agency Review of the Submittals

1. Adequacy of the State's Demonstrations of Attainment

Did the State adequately document the techniques and data used to derive the modeling input data and modeling results? The submittals from the State thoroughly documented the techniques and data used to derive the modeling input data. The submittals adequately summarized the modeling outputs and the conclusions drawn from these model outputs. The submittals adequately documented the State's weight-of-evidence determinations and the bases for concluding that these determinations support the attainment demonstration.

Did the modeling procedures and input data used comply with the Environmental Protection Agency guidelines and Clean Air Act requirements? Yes, the modeling procedures and input data (including evaluation of the emissions inventory input and procedures) meet the requirements of the Act and are consistent with the EPA's July 1991 and June 1996 ozone modeling guidelines.

Do the weight-of-evidence determinations support the attainment demonstration? The TNRCC incorporated the following weight-of-evidence elements for the BPA attainment demonstration:

- Design Value trends;
- Modeling metrics evaluating spatial and temporal changes in ozone extent;
- Results of alternative modeling scenarios including 30% point source NO_X reductions in adjacent, non-SIP call states; and,
- DVf/RRF calculations using modeled concentrations from an array of cells about each monitor.

The above weight-of-evidence, when viewed in aggregate with the modeling, shows attainment of the standard and thus EPA is proposing approval.

2. Adequacy of the Emissions Control Strategies

Do the emission control strategies meet the requirements of the Clean Air Act? The selected emission control strategy, based upon modeling and the weight-of-evidence techniques, plus additional information regarding the effect of HG upon BPA, demonstrates attainment of the 1-hour ozone standard in BPA.

Do emission control shortfalls exist with regard to probable attainment of the ozone standard? We do not believe there exist any emission control shortfalls with regard to the attainment of the 1-hour ozone standard in BPA by the 2007 attainment year, provided the HG area meets its enforceable commitment to submit all adopted rules needed for attainment by the end of December 2000. On December 6, 2000, the TNRCC adopted a major SIP revision for the HG area. In this revision, the commission adopted all of the measures relied upon in the BPA attainment demonstration. EPA will be evaluating the HG SIP measures after they are received (expected by December 31, 2000).

Has the State established an acceptable MVEB? The State has submitted an MVEB. The MVEB budget submitted by the TNRCC for the BPA nonattainment area has been found to meet the adequacy criteria and upon further review of the SIP for approvability continues to be consistent with attainment; therefore, it is proposed for approval.

Does the BPA Area Meet the RACT Requirements for Major Source VOC Emissions?

On March 7, 1995, as part of our action approving VOC requirements, we found that TNRCC had implemented RACT on all major sources in the BPA area except those that were to be covered by post-enactment Control Technique Guidelines (CTG's). 44 FR 12438 (March 7, 1995). Since that time, many expected CTGs were issued as Alternative Control Technique documents (ACTs). Of the expected CTGs and ACT's, BPA has major sources in the following categories: batch processing; reactors and distillation; industrial wastewater; and Volatile Organic Liquid Storage. EPA has approved measures as meeting RACT for the reactors and distillation and the Volatile Organic Liquid Storage categories for the BPA area. 64 FR 3841 (January 26, 1999), and 61 FR 55894 (October 30, 1996), respectively. EPA has published a direct final rulemaking action wherein we find that the State is imposing RACT on the batch processing and industrial wastewater categories in the BPA area (signed November 2, 2000). While CTGs and ACTs were issued for other categories such as wood furniture coating or aerospace coating, there are no major sources in those categories in the BPA area. It is EPA's position that RACT is being implemented on all major VOC sources in BPA. (see item 8 under Section IV Proposed Action).

3. Adequacy of the Request for Extension of the Attainment Date

The policy for the extension of an ozone attainment date is discussed earlier. The State's compliance with these requirements is discussed here.

a. Identification of the area as a downwind area affected by ozone transport.

We have reviewed the CAMx demonstrations, and are proposing to agree with the TNRCC that this episode adequately demonstrates transport of pollutants from the Houston Galveston ozone nonattainment area. We are proposing that this transported pollution affects BPA's ability to attain by the current attainment date. Thus, for BPA to attain, controls both in BPA and HG are necessary. We therefore propose to find that the State's demonstration of

ozone transport meets the criteria in EPA's attainment date extension policy.

b. Submittal of an approvable attainment demonstration.

EPA's review of the attainment demonstration shows that it should be approved. The State has modeled and adopted an acceptable control strategy that demonstrates attainment. We propose to approve the attainment demonstration and agree that it meets the criteria in the July 1998 transport policy and all other EPA guidance, and the regulatory and statutory requirements.

c. Adoption of all applicable local measures required under the area's current ozone classification.

Texas has adopted all VOC and NO_X related emission control requirements required under the Clean Air Act (CAA) for a moderate ozone nonattainment area. A listing of applicable CAA moderate classification-related VOC and NO_X related regulations and their effective dates as approved by the EPA as part of the Texas SIP for the BPA area, is provided in the TSD to this rulemaking.

It is EPA's position that the State of Texas has met the 1998 Transport Policy's criteria for adoption and submittal to EPA for approval of all measures required under the Act for an area classified as moderate.

d. Implementation of all adopted measures by the time upwind controls are expected.

All of the NO_X rules will be implemented as expeditiously as practicable, but no later than 2005, two years before the Houston attainment date of November 15, 2007. We are proposing to find that this transport policy criteria has been met by the State.

The State is proposing a phase-in approach to the NO_X controls which will provide compliance earlier than the attainment date. The State's compliance schedule is provided in Table 7.

TABLE 7.—TEXAS NO_X RULES COMPLIANCE SCHEDULE

Source Type	Compliance date
RACT	No later than November 15, 1999.
Lean Burn Engines	No later than November 15, 2001.
⅔ NO_X Emissions Reductions.	No later than May 1, 2003.
All NO_X Reductions	No later than May 1, 2005.

We are of the opinion that the above listed compliance dates in Table 7 are as expeditious as practicable compared with the compliance dates of similar sources in moderate ozone nonattainment areas of the country.

4. Determination of Reasonably Available Control Measures (RACM) Availability.

Section 172(c)(1) of the Act requires SIPs to provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable and for attainment of the standard. EPA has previously provided guidance interpreting the RACM requirements of 172(c)(1) in the General Preamble. See 57 FR 13498, 13560. In the General Preamble, EPA indicated its interpretation of section 172(c)(1), under the 1990 Amendments, as imposing a duty on States to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the particular nonattainment area. EPA also retained its pre-1990 interpretation of the RACM provisions that where measures that might in fact be available for implementation in the nonattainment area could not be implemented on a schedule that would advance the date for attainment in the area, EPA would not consider it reasonable to require implementation of such measures. EPA indicated that a State could reject certain measures as not reasonably available for various reasons related to local conditions. A State could include area-specific reasons for rejecting a measure as RACM such as the rejected measure would not advance the attainment date, or technological and economic feasibility in the area.

The EPA also issued a recent memorandum reaffirming its position on this topic, "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas." John S. Seitz, Director, Office of Air Quality Planning and Standards, dated November 30, 1999. A copy can be obtained from *www.epa.gov/ttn/oarpg/t1pgm.html*. In this memoranda, EPA states that in order to determine whether a state has adopted all RACM necessary for attainment and as expeditiously as practicable, the state will need to provide a justification as to why measures within the arena of potential reasonable measures have not been adopted. The justification would need to support that a measure was not reasonably available for that area and could be based on technological or economic grounds.

EPA has reviewed the SIP submittal for the BPA area and believes that the State did not include sufficient documentation concerning the rejection of certain available measures as RACM for the specific BPA area. Therefore, EPA has itself reviewed potential available measures, as documented in the RACM available analysis section of the TSD for this proposed rulemaking. Based on this analysis, EPA proposes to conclude that this additional set of evaluated measures are not reasonably available for the specific BPA area, because (a) some would require an intensive and costly effort for numerous small area sources, (b) due to the small percentage of mobile source emissions in the over-all inventory, some are not cost-beneficial, and (c) since the BPA area relies in part on reductions from the upwind HG area which are substantial, and the reductions projected to be achieved by the evaluated additional set of measures are relatively small, they would not produce emission reductions sufficient to advance the attainment date in the BPA area and, therefore, should not be considered RACM.

Although EPA encourages areas to implement available RACM measures as potentially cost-effective methods to achieve emissions reductions in the short term, EPA does not believe that section 172(c)(1) requires implementation of potential RACM measures that either require costly implementation efforts or produce relatively small emissions reductions that will not be sufficient to allow the BPA area to achieve attainment in advance of full implementation of all other required measures.

III. Proposed Action

The EPA believes that the transport demonstration and attainment demonstration SIP developed for the BPA ozone nonattainment area meet the Clean Air Act. The EPA is proposing that the State has adequately followed the EPA's 1998 Transport Guidance for demonstrating transport. In the State's transport demonstration, EPA believes that the analyses conducted by TNRCC indicate there are impacts of ozone and ozone precursor transports from the upwind HG area affecting the BPA area. In addition, EPA is proposing to approve the State's demonstration that BPA will attain the ozone NAAQS. The modeling, the provided weight-of-evidence analyses, and the analysis of transport of ozone and ozone precursor compounds from the HG area, demonstrate that the control strategy chosen by TNRCC will provide for attainment of the ozone standard. For BPA, it is the EPA's technical opinion that the control strategy will provide for

attainment of the ozone NAAQS by November 15, 2007.

The EPA proposes to: approve the attainment demonstration SIP for the BPA ozone nonattainment area; approve the State's request to extend the ozone attainment date for the BPA ozone nonattainment area to November 15, 2007 while retaining the area's current classification as a moderate ozone nonattainment area; approve the on-road motor vehicle emissions budgets; find that the BPA area meets all remaining outstanding VOC RACT requirements for major sources; and approve the State's enforceable commitment to conduct a mid-course review (including evaluation of all modeling, inventory data, and other tools and assumptions used to develop this attainment demonstration) and to submit a mid-course review SIP revision, with recommended mid-course corrective actions, to the EPA by May 1, 2004. If the subsequent analyses conducted by the State as part of the mid-course review indicate additional reductions are needed for BPA to attain the ozone standard, EPA will require the State to implement additional controls as soon as possible until attainment is demonstrated through photochemical grid modeling.

EPA cannot finalize the above proposed actions unless and until the EPA approves all of the following:

1. The NO_X rules for Electric Generating Facilities in East and Central Texas (30 TAC sections 117.131, 117.133, 117.134, 117.135, 117.138, 117.141, 117.143, 117.145, 117.147, 117.149, 117.512);

2. The State-wide NO_X rules for Water Heaters, Small Boilers, and Process Heaters (30 TAC sections 117.460, 117.461, 117.463, 117.465, 117.467, 117.469);

3. The revised emission specifications in the BPA area for Electric Utility Boilers, Industrial, Commercial or Institutional Boilers and certain Process Heaters (30 TAC sections 117.104, 117.106, 117.108, 117.116, 117.206 as they relate to the BPA area, and the repeal of sections 117.109 and 117.601 as they relate to the BPA area);

4. The administrative revisions to the existing Texas NO_X SIP (30 TAC sections 117.101–117.121, 117.201–117.223, 117.510, 117.520, and 117.570);

5. The two Agreed Orders entered into by TNRCC and Alcoa, Inc. and TNRCC and Texas Eastman;

6. Lower RVP Program in East and Central Texas (30 TAC sections 114.1, 114.301, 114.302, and 114.304–114.309);

7. Stage I vapor recovery Program in East and Central Texas (30 TAC sections 115.222–114.229); and,

8. VOC rules as RACT for batch processing (30 TAC sections 115.160–115.169) and wastewater (30 TAC sections 115.140–115.149).

If the EPA cannot fully approve all of the above actions (one through eight), EPA will take final action on the proposed reclassification as described in the April 16, 1999 **Federal Register**. To the extent that comments received on the April 1999 proposed action are applicable to this proposed rulemaking, EPA will respond to those comments in its final rulemaking action.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The proposed rule does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

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

Dated: December 18, 2000.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 00–32848 Filed 12–26–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL165–1; FRL–6923–3]

Approval and Promulgation of Implementation Plans; Illinois Trading Program

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: On December 16, 1997, Illinois submitted rules establishing a "cap and trade" program for volatile organic compound (VOC) emissions in the Chicago area. Illinois issues each major source an allotment of allowances, which it calls allotment trading units or ATUs. For most sources, this allotment corresponds to 12 percent below baseline emissions. Each source must emit no more than the level at which it holds allotment trading units. Trading of allotment trading units is allowed, so that sources that reduce emissions more than 12 percent may sell allotment trading units, and sources that reduce emissions less than 12 percent must buy allotment trading units. In effect, trading increases the allowable emissions of the allowance buying source, equally decreases the allowable emissions of the allowance selling source, and yields no change in total allowable emissions. The net effect is to set a cap reflecting approximately a 12 percent reduction in VOC emissions in the Chicago area.

USEPA proposes to grant final approval of these rules if Illinois resolves certain issues. Specifically, USEPA proposes that Illinois must: Clarify the timeline and penalties for violating sources, satisfy USEPA's trading program policy on environmental justice, provide for full-year offsets for new sources, commit to discount credits where emission reductions are potentially accompanied by emission increases elsewhere, and commit to remedy any problems identified in its periodic program review.

DATES: Written comments on this proposed rule must arrive on or before January 26, 2001.

ADDRESSES: Send comments to:

J. Elmer Bortzer, Acting Chief, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal are available for inspection at the following address: (We recommend that you telephone John Summerhays at (312) 886-6067, before visiting the Region 5 Office.)

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, summerhays.john@epa.gov, (312) 886–6067.

SUPPLEMENTARY INFORMATION: In this proposed rulemaking, the terms "we," "us," and "our" mean USEPA. This document is organized according to the following table of contents:

I. Introduction

On December 16, 1997, Illinois submitted rules for a "cap and trade" program for emissions of volatile organic compounds (VOC[1]) in the Chicago area. In this program, sources receive allotments generally equivalent to 12 percent less than their baseline emissions, issued as the appropriate number of allotment trading units or ATUs. Sources must have emissions no higher than the number of ATUs they hold, so a source's ATU holdings are a "cap" on its emissions. Sources may buy or sell ATUs and thereby increase or decrease their own cap. This "trade" of ATUs gives sources more flexibility in meeting program requirements. Trading is expected to shift emission reductions toward sources that can reduce emissions more cheaply. Trading does not affect the net total emissions allowed under the program, which is approximately 12 percent below net total baseline levels.

USEPA proposes to approve these rules, provided that Illinois addresses certain issues. Specifically, USEPA proposes to approve the rules only if Illinois: (1) Clarifies the applicability of penalties as given in Clean Air Act section 113 for violating sources, (2) satisfies USEPA's trading program policy on environmental justice, (3) provides for full-year offsets for new sources, (4) commits to discount credits where emission reductions are accompanied by emission increases elsewhere, and (5) commits to remedy any problems identified in its periodic program review.

II. The Features of the Illinois Trading Program

What Is the Purpose of the Program?

The Illinois trading program is designed to reduce VOC emissions and thereby help attain the ozone standard in the Chicago area. The Chicago area is a Severe ozone nonattainment area.

How Does the Illinois Trading Program Work?

The Illinois trading program is a cap and trade program. Each participating source is subject to a cap on its total emissions, but sources may redistribute the allowed emissions by trading allotment trading units. The Illinois Environmental Protection Agency (IEPA) establishes a cap for each

[1] Illinois uses the term "Volatile Organic Material" (VOM) rather than VOC. The State's definition of VOM is equivalent to USEPA's definition of VOC. The two terms are interchangeable when discussing volatile organic emissions. For consistency with the Act and USEPA policy, this rulemaking uses the term VOC.

participating source as a function of ozone season emissions during a baseline period (generally 1994 to 1996). In most cases, this cap is set at 12 percent below baseline emissions.

Each year, the State issues allotment trading units or ATUs to each source, reflecting the source's cap level of emissions. Sources are required to hold a number of ATUs that is at least equivalent to their actual ozone season emissions that year. If a source emits more or less emissions than corresponds to its State issuance of ATUs, it must purchase or may sell ATUs, respectively, until the source at a minimum holds the number of ATUs that correspond to the source's emissions for that ozone season.

It is immaterial whether changes in emissions are due to emission controls or production level changes. For example, a source that emits 15 percent less per widget but produces 10 percent more widgets is still required to purchase ATUs.

If no trading were to occur, then each source would have to limit its emissions to its allotment level, which again in most cases is 12 percent below baseline emission levels. Trading of ATUs allows redistribution of emissions from the seller to the buyer of ATUs. For example, if a source was issued ATUs for 50 tons of emissions but emitted 75 tons, the source would have to buy 25 tons worth of ATUs, generally from another source that reduced its emissions to 25 tons below its allotment level. Presumably, sources that can reduce emissions more cheaply will be selling ATUs to sources for whom controls are more expensive. However, this trading does not increase the total emissions that are allowed from the universe of sources in the program. Consequently, total emissions from the sources in the program are subject to a net cap equal to approximately 12 percent below the total baseline emissions.

The rules for the Illinois trading program provide various tools for implementing the program. The rules provide for an electronic data base for tracking ATUs. This data base will include information on the trades of ATUs, the current holdings of each source, and additional information such as recent ATU prices. Thus, after a source reports its ozone season emissions each year, it is then easy to identify whether a source has adequate ATUs to accommodate its emissions for that year's ozone season.

What Sources Are in the Program?

Participation in the trading program is mandatory for essentially all major sources of VOC in the Chicago area. In this area, "major source" of VOC is defined as a source with the potential to emit 25 tons of VOC per year. The only significant exclusion of major sources from the trading program is for sources that emit disproportionately little during the summer, specifically for sources that emit less than 10 tons during the ozone season. Participation is mandatory for sources throughout the Chicago ozone nonattainment area, including Cook, DuPage, Kane, Lake, McHenry, and Will Counties, as well as townships within Grundy County (Aux Sable and Goose Lake Townships) and Kendall County (Oswego Township).

Additional sources have the option for voluntary participation. Illinois' rules include separate "opt-in" provisions for small industrial sources and for mobile and area sources. Any person who arranges emission reductions from such sources may petition IEPA to receive allotments corresponding to the quantity of the emissions reduction. The direct or indirect sale of these ATUs to a major source will then shift the burden of emission reductions from major to minor sources but will not alter the total emission reductions that must occur.

What Must Sources in This Program Do?

Sources in the Illinois trading program have several obligations. First, the source must evaluate its baseline emissions and submit this information as part of an application for an allotment of ATUs. The application also must identify the emission quantification techniques used to determine baseline and future year emissions and must justify any requests for exemption from the 12 percent reduction that is normally reflected in allotment levels. IEPA uses this information to determine the allotment it will issue to the source and to establish the methods that the source shall use to determine future emissions levels.

Illinois began issuing ATUs in early 2000. (The rules provide for first issuance in 1999, but Illinois has deferred this one year.) Each source is required to apply the identified methods for determining emissions during the ozone season, defined for the trading program as May through September. Now, the most important source obligation has begun, namely to assure that emissions are no higher than the quantity of ATUs held.

How Does Illinois Set Baseline Emission and Allotment Levels?

Baseline emissions generally reflect VOC emissions during the ozone seasons in 1994, 1995, and 1996. Illinois adjusts these emissions values downward if the emissions exceeded 1996 allowable emissions levels, whether due to noncompliance or because 1996 limitations were not yet in effect. Illinois adjusts these emission values upward if the source reduced emissions after 1990 below the level required as of 1996. In most cases, baseline emissions reflect the average of the higher two of these three ozone season emissions values. However, the option exists for sources to demonstrate that their production levels were unrepresentative for one or more of these years and to substitute a value(s) from a more representative year chosen from 1990 to 1993 or from 1997.

Once Illinois establishes baseline emissions, it can determine the quantity of ATUs to be issued to the source. In most cases, allotments are set at 88 percent of baseline emissions, targeting a 12 percent emission reduction.

An exception applies if the source can demonstrate that an emissions unit is well controlled and should not be targeted for further reductions. This exception is possible if the source is meeting a recently established Lowest Achievable Emission Rate limitation, is meeting a Maximum Achievable Control Technology limitation, or has Best Available Technology. In such cases, allotments for such a unit are set at the well controlled level.

What Elements of This Program Are Implemented Through Title V Permits?

The State uses source operating permits to implement several features of the trading program. As mandated by Title V of the Clean Air Act, Illinois requires operating permits for all major sources, which it calls Clean Air Act Permit Program (CAAPP) permits. These permits must identify all requirements applicable to a source and can be issued only after input from USEPA and the public has been solicited. Illinois' trading rules require participation only from sources that must obtain a CAAPP permit. This permit is used to formally establish the source's baseline emissions, identify any maximally controlled emission units that are exempt from the 12 percent reduction requirement, set the quantity of ATUs to be issued to the source, and specify the methods to be used to measure emissions. To incorporate these items into the CAAPP permit, the State must follow procedural requirements that provide ample opportunity for USEPA and the public to have input into any relevant issues.

What Penalties Apply to Noncomplying Sources?

Sources violating the requirements of the Illinois trading rules are liable for the full penalties authorized in Section 113 of the Clean Air Act. One type of noncompliance is violating requirements for measuring and reporting emissions. A second type of noncompliance is failing to hold ATUs equivalent to the year's ozone season emissions.

Sources must generally secure adequate ATUs by December 31 of each year, that is, within 3 months of the end of each ozone season. A source that holds insufficient ATUs at the end of the year then has a "second chance" to secure ATUs equaling 120 percent (or in some cases 150 percent) of the shortfall. This "second chance" appears to last for 3 additional months, though USEPA is requesting clarification from IEPA on this point. A source that holds insufficient ATUs after this "second chance" is a violating source. This source could be subject to various enforcement actions and would be liable for penalties currently authorized at up to $27,500 per day for each of the 153 days of the ozone season.

Does This New Program Relax Any Old Requirements?

In general, no. Most importantly, no emission limitations are relaxed by this program. The limitations requiring reasonably available control technology (RACT), for example, remain fully and independently enforceable. That is, a source that exceeded its RACT limits would be liable for enforcement action regardless of the number of ATUs it held.

The one pre-existing requirement that the Illinois trading rules modify is the requirement for offsets for major new sources and major modifications of existing sources. In these cases, the source obtains offsets by obtaining the appropriate number of ATUs rather than by traditional means as part of a construction permit. Since the Chicago area is a severe ozone nonattainment area, sources must obtain 1.3 tons worth of ATUs for each ton of new source emissions. The State issues no ATUs for new sources or for modifications. The ATUs that the source must purchase to accommodate these new emissions are available if and only if some other source has made a corresponding reduction in its emissions. Therefore, the trading program provides offsets that in principle are equivalent to offsets provided by traditional means. However, the use of the trading rules to provide offsets has several ramifications for the quantity of offsets required and obtained. These ramifications are discussed below in the review of Illinois' program.

III. The Criteria for Reviewing Illinois' Program

What Types of Review Criteria Is USEPA Using?

USEPA must use several types of criteria for evaluating Illinois' trading program. First, USEPA has established numerous criteria as part of published and promulgated guidance on economic incentive programs, including guidance on emission trading programs. Second, USEPA must apply guidance on any other Clean Air Act program that is affected by Illinois' program. Third, insofar as the purpose of Illinois' program is to achieve specified emission reductions, USEPA must evaluate the State's estimate of anticipated reductions.

The guidance most relevant to Illinois' trading program is the guidance on economic incentive programs published on April 7, 1994, promulgated as subpart U of part 51 of title 40 of the Code of Federal Regulations (40 CFR 51), including sections 51.490 to 51.494. Although a portion of that guidance speaks to economic incentive programs that are required in certain circumstances under the Clean Air Act, that portion of the guidance is not relevant here. Instead, the relevant portion of that guidance addresses voluntary programs, with the general purpose of assuring that the net effect of any emissions trading (or actions under any other economic incentive program) does not cause violations of any of various requirements of the Clean Air Act.

More recently, on September 15, 1999, at 64 FR 50086, USEPA published notice of availability of proposed revised guidance on economic incentive programs. This guidance proposes more detailed recommendations for many of the issues addressed in the 1994 guidance and also provides guidance on several types of programs not addressed in the 1994 guidance.

One issue not addressed in the proposed guidance is whether this guidance applies to programs developed before the proposed guidance became available. When USEPA publishes new guidance, USEPA often allows an exemption from that guidance for submittals that the State adopted and submitted prior to the proposal of that guidance. This exemption is known as "grandfathering." This practice allows us to approve programs that the State adopted in good faith according to guidance available at the time. Since Illinois submitted its program on December 16, 1997, today's rule grandfathers this program from most of the 1999 proposed guidance and instead reviews most aspects of this program against the criteria published in 1994.

Today's rule nevertheless uses one element of the newer proposed guidance in our review of Illinois' program, namely the element that addresses environmental justice and related "toxic hotspot" issues. Environmental justice refers to efforts to assure that areas with high populations of minorities or low-income persons are not unfairly exposed to environmental hazards such as toxic air pollutants. The proposed new guidance identifies specific issues to be addressed to assure that trading programs do not have an inequitable impact on environmental justice areas or other communities of concern. We are applying this portion of the proposed guidance due to the importance of this issue and because relevant guidance was not previously available.

For other issues, USEPA intends to examine Illinois' program in light of the new guidance once the new guidance is finalized. USEPA has discussed these plans with Illinois. Illinois and USEPA share an understanding that we will review the program accordingly and Illinois will reconcile the program to the new guidance within three years after guidance issuance.

A second set of criteria is that the program not result in contravention of any Clean Air Act requirement. As will be discussed below, the Illinois trading program has little effect on other programs, and so only limited guidance on other programs must be considered.

A third set of review criteria is for the quantity of emission reductions that the program is likely to achieve. These criteria reflect standard judgments of emission inventory estimates. This review is expected to be relevant in a future review of whether Illinois has provided sufficient emission reductions to attain the ozone standard.

What Published Guidance Applies to This Type of Trading Program?

Guidance published on April 7, 1994, promulgated at 40 CFR 51 subpart U, gives guidance on numerous features of trading programs. This guidance helps assess whether State programs:

—Assure that credits are quantifiable, surplus, enforceable, and permanent. Quantifiable means that the quantity of emission reductions can be estimated. Surplus for this type of program means that reductions creditable to this program are not already required under

other programs. Enforceable means that the State and USEPA can take action to require compliance with the program requirements and deter noncompliance. Permanent here means that reductions are required as long as the trading rules are part of the State Implementation Plan (SIP).

—Assure that appropriate methods will be used to determine emission quantities. The 1994 guidance requires that the submittal "specify the approach or the combination or range of approaches" that will be used for each source category to quantify emissions, and provides guidance for judging whether these approaches are acceptable.

—Authorize adequate penalties for sources that violate these rules. State programs must authorize enforcement actions and penalties as permissible under section 113 of the Clean Air Act (currently, penalties up to $27,500 per day per violation) or equivalent penalties based on the size of the violation measured in tons.

USEPA is also evaluating Illinois' program against criteria in the 1999 proposed guidance for addressing environmental justice issues. USEPA shares the commonly expressed concern about the possibility of trading programs creating localized increases in hazardous air pollutants, both in minority and low-income areas ("environmental justice areas") and elsewhere. This is a concern with programs that address VOC or particulate matter emissions, insofar as these emissions may have hazardous constituents. Therefore, USEPA's 1999 proposed guidance identifies four elements of well designed trading programs, including (1) prevention or mitigation of unacceptable impacts, (2) provision of sufficient information for public review, (3) suitable opportunities for public input, and 4) periodic program review to identify and remedy problems.

Does the Program Affect Satisfaction of Other Clean Air Act Requirements?

An important general criterion in reviewing any trading program is whether the program affects other State regulatory provisions such that the State no longer satisfies Clean Air Act requirements. The specific criteria to be used in program review are a function of the particular provisions that the program affects. For example, many trading programs allow relaxations from RACT (counterbalanced by other reductions) or allow alternative reductions to achieve RACT. Such programs must be reviewed based on criteria that address whether the alternative set of limits continue to satisfy RACT requirements.

As noted in the prior section describing the Illinois trading program, Illinois' program has no effect on emission limitations that satisfy RACT or other assorted Clean Air Act requirements. As a result, no detailed review of the Illinois program is needed to conclude that these requirements remain satisfied.

The only existing provision in Illinois rules that the trading program affects is the requirement for offsets of emissions from major new sources and major modifications. Sources conventionally obtain offsets as part of a construction permit. Therefore, sources conventionally obtain offsets in advance of construction, based on shutdown or reductions at a specified other source. Under the Illinois trading program, sources obtain offsets in the form of ATUs, which represent emission reductions at the source or sources that no longer hold(s) these ATUs. In effect, the source obtains offsets on an ongoing basis, perhaps from different sources at different times.

The offset requirement is established in Section 173 of the Clean Air Act. Section 173(c) requires that "the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions * * * from the same or other sources in the area." Section 173(a) requires that these offsets be sufficient to assure "that total allowable emissions from existing sources (plus any new source emissions) will be sufficiently less than (existing emissions) so as to represent * * * reasonable further progress." Section 182(d) generally requires 1.3 tons of offsets per ton of new emissions. These requirements set the principal criteria for reviewing this aspect of the Illinois program. The program review below discusses these criteria in more detail.

How Does USEPA Judge the Program's Emissions Reductions?

Illinois' trading program submittal includes an estimate of the emission reductions that it expects the program to achieve. USEPA must review baseline emissions estimates from Illinois and differences between baseline emissions as defined by the program and average actual emissions. USEPA must also evaluate the impact of assorted program features such as exemptions from the 12 percent reduction, potential use of a special ATU fund, the distribution of ATUs upon source shutdown, and the possibility of ATU creation from reductions by small sources. This review will also address the possibility of false credits from "demand shifting" (*e.g.* shutdown of a gasoline station leading to increased gasoline sales elsewhere) and the possibility of "spiking" (*i.e.* hoarding of ATUs now followed by high emissions in a future year).

IV. USEPA Review of the Features of Illinois' Program

Does the Program Assure that Emission Reductions are Quantifiable, Surplus, Enforceable, and Permanent?

USEPA's guidance on trading programs includes four key principles, that emission reductions in these programs be quantifiable, surplus, enforceable, and permanent. This section will review whether the emission reductions in Illinois' program are surplus and permanent. Subsequent sections will review whether the emission reductions are quantifiable and enforceable.

"Surplus" here means that the emission reductions are beyond the requirements which are already part of the SIP. Illinois' trading rules use the existing SIP as the baseline from which further reductions are calculated. This approach is used both in setting baseline emissions levels for major sources, from which a 12-percent reduction is calculated, and in assessing the number of ATUs to be issued for emission reductions by minor sources and mobile sources. Thus, the reductions from the Illinois trading program qualify as surplus.

A question about whether the trading program reductions are surplus may arise in the future. If Illinois adopts further regulations, USEPA must evaluate whether the reductions pursued by those regulations would also help meet trading rule requirements. If so, then USEPA would view the trading rule as continuing to achieve the reductions accorded to it in this rulemaking but would view the further regulations as achieving no further reductions. For example, if Illinois adopts a car scrappage program that allows generation of ATUs based on the emission reductions, then USEPA would view this program as redistributing the emission reductions of the trading program without producing further reductions.

"Permanent" is defined in USEPA's economic incentive program guidance as assuring that the emission reductions will endure as long as the rule applies and as long as the SIP relies on these reductions. This principle is satisfied because the Illinois trading rules and

the emission reductions they require have no termination.

Does the Program Assure that Appropriate Methods Will Be Used to Measure Emissions?

Trading programs must provide appropriate methods for determining the quantity of emissions, in order that trades and compliance evaluations accurately reflect actual emissions. Guidance at 40 CFR 51.493(d) states that programs are to specify the approach or menu of approaches that may be used for each source category in the program.

The Illinois program identifies methods to be used for each type of emission unit. Section 205.330 identifies a range of methods which, "in conjunction with relevant source-specific throughput and operating data, are acceptable methods * * * to determine seasonal emissions". For example, the first method is "material balance calculation, based on the VOM content of raw materials and recovered materials, as is typically used for degreasers, coating lines, and printing lines equipped with a carbon adsorption system (recovery-type control device) or without any control device".

USEPA's 1994 guidance does not address how particular emission quantification methods for particular sources are to be chosen from a range of methods or whether USEPA is to be given the opportunity to review the selection. Nevertheless, the Illinois program provides USEPA and the public an additional opportunity to review the specification of the method to be used for each unit of each source. The Illinois rules dictate that the methods to be used for each source are to be specified in the source's Title V permit. Consequently, USEPA and the public have the opportunities for methods review that are inherent in the Title V process, including a 30-day public review of a draft permit and a 45-day period in which USEPA may veto the permit if it finds the permit objectionable. Thus, the Illinois program satisfies the guidance of 40 CFR 51.493(d) for programs to specify the approach or range of approaches to be used, and provides additional opportunity for USEPA and the public to assure that each source's methods are appropriate.

Although USEPA is not currently reviewing Illinois' program against recent proposed guidance, it is worth noting that the program in fact satisfies this proposal. An option in the proposed guidance is for methods to be specified according to a procedure that offers a 30-day opportunity for public comment and a 45-day opportunity for USEPA to take steps leading to rejection of the method proposed by the State. Illinois identifies presumptive methods in its rules but uses Title V permits to require specific methods for specific sources. Therefore, Illinois' program satisfies the recent proposed guidance with respect to establishment of emission quantification methods as well as the 1994 guidance on the subject.

Does the Program Authorize Adequate Penalties for Sources that Violate These Rules?

USEPA guidance requires that sources that violate trading program requirements be potentially liable for the penalties authorized in Section 113 of the Clean Air Act or their equivalent. USEPA's guidance further specifies that a violation for an ozone season must be tallied as a violation for each day of the season. The Illinois rules authorize penalties of this magnitude for violators of Illinois trading program requirements.

Applicability of these penalties is straightforward for violations of measuring, recordkeeping, and reporting requirements. Applicability for violation of the ATU holding requirement is more complicated, reflecting the schedule by which this requirement takes effect.

Sources are ordinarily expected to hold ATUs at least equivalent to an ozone season's emissions by December 31 of that year. A source that holds insufficient ATUs then to accommodate its ozone season emissions has a "second chance" to accommodate its emissions. In this "second chance," the source must obtain ATUs equal to the shortfall in its end-of-year ATU holdings plus a surcharge. The surcharge is generally 20 percent of the shortfall, but the surcharge is 50 percent of the shortfall if the source also had a shortfall the previous year. A source must either purchase the necessary ATUs or request to be issued that many fewer ATUs for the next year. A source that fails to compensate for its December 31 shortfall is violating the program requirements and is subject to penalties as authorized in Section 113.

Illinois' rules do not identify an explicit deadline by which sources must obtain compensating ATUs. However, practical considerations imply a de facto deadline. Since the next ozone season begins May 1, the State must issue ATUs by about April 1. This date would thus be a deadline for sources to request a reduction in the number of ATUs issued to them. More generally, if by April 1 a source has neither requested a reduction in their year's ATU issuance nor purchased the necessary ATUs, the source would clearly be violating the rules and the State could commence enforcement action.

While USEPA views the rules as implying a deadline for compliance, we believe that the State must clarify whether this interpretation is appropriate. Given the importance of having a clear deadline for compliance, USEPA intends to approve these rules only if the State submits clarifications that demonstrate that sources have a deadline for obtaining the necessary ATUs or be in violation and liable for appropriate enforcement action.

Does the Program Adequately Address Environmental Justice Issues?

"Environmental justice" concerns the possibility that low income and minority populated areas are subject to worse environmental conditions and less regulatory mitigation efforts. The question here is what effect the Illinois program might have on air quality in low income and minority populated areas. A related question is whether the Illinois program might lead to worsened air quality in any location. These are not issues for ozone, insofar as ozone air quality is a regional problem that is insensitive to emission distributions. Instead, these issues arise because a subset of the VOC being regulated are hazardous air pollutants (HAPs). As a result, the issues arise from the possibility that a local increase of VOC emissions might occur that might translate to a local increase in HAP concentrations, notwithstanding the general VOC emission reductions that the trading program pursues.

The 1999 proposed guidance on economic incentive programs proposes four key elements to be included in trading programs to assure environmental justice and to avoid problematic increases in localized concentrations of HAPs. These elements are: (1) Provisions that prevent or mitigate potential adverse changes in emissions or emission distribution of HAPs, (2) provisions for sufficient information to be made available for meaningful review and participation, (3) public participation in program design, implementation, and evaluation, and (4) periodic program evaluations.

The proposed guidance notes the typical differences between open market trading programs and cap and trade programs, and recognizes that cap and trade programs often inherently make trades increasing HAPs unlikely. The guidance states:

> Cap-and-trade programs * * * typically impose an emissions cap that requires a reduction in overall emissions, and typically require compliance with existing emission rate limitations. Despite the possibility of

emission increases at sources that increase production and do not add emission controls, these program features help assure that a participating source would be unlikely to increase its HAP emissions to unacceptable levels. As a result, cap-and-trade programs in general are less likely to need additional measures to prevent trades that would increase HAP emissions. In most cap-and-trade programs, a retrospective program evaluation is more important for ensuring that the program did not, in fact, create unacceptable localized emission increases.

The Illinois program is in fact a cap and trade program that requires a reduction in overall emissions and requires full compliance with HAPs emissions limits (notably, maximum achievable control technology (MACT) limits) and RACT limits, irrespective of the number of ATUs held. Emissions increases can occur at sources that increase production, but the program allows no emission increases that are not allowed in the absence of the program, and the program does not allow any source to forgo emission reductions that would otherwise be required. Furthermore, Illinois' program reduces the likelihood of emission increases, because a source that increases emissions here faces a cost not imposed elsewhere of purchasing ATUs for the emission increase in addition to the ATUs needed to avoid the normal 12-percent emission reduction. Consequently, the Illinois program is expected to reduce the likelihood of localized increases in HAPs emissions.

The second and third elements of USEPA's proposed policy on HAPs and trading concerns whether sufficient information is available and whether the public has suitable opportunities to provide informed input into the development and implementation of the program. The rules establishing the procedures and criteria of the program were adopted on the basis of a lengthy stakeholder consultation process as well as the normal process for public input for rulemaking. The Title V permit process employed in Illinois' program provides for public input in the establishment of the source-specific elements of the program. Finally, the ATU tracking data base and the annual report provide the public sufficient information and opportunity to offer input on ongoing implementation issues.

The fourth element to be addressed is to provide for periodic program evaluation and opportunity to remedy any problems that are identified following startup of the program. The rules for Illinois' program require an annual program review and report by Illinois. Illinois has convened a workgroup to determine what type of information to provide in this annual report. The workgroup includes business and environmental group representatives, and USEPA attends its meetings. The workgroup has focused on defining the information that companies must report to support an assessment of the effects of the program on HAPs emissions. The workgroup has achieved general consensus on a draft rule to require companies to report emissions of individual HAP species that are emitted in significant quantities in the Chicago area.

The State has not discussed how its annual report will be distributed or what it will do with the results of the report. In particular, the State has made no commitment to remedy any program deficiencies that are identified. USEPA needs this information before it can reach final judgment on whether Illinois' program satisfies this portion of USEPA's guidance.

As discussed in USEPA's proposed policy, USEPA must evaluate programs as a whole by considering the four above program elements jointly. In formulating this proposed policy, USEPA envisioned that cap and trade programs in many cases would inherently be unlikely to yield localized HAP increases, and that in such cases the mid-course program review would play an enhanced role as a backstop for assuring that the expected protection against localized HAP increases is realized. Therefore, USEPA proposes that if Illinois commits to a wide distribution of its annual review and commits to remedy any problems identified in its annual program review, then the Illinois program would be found to provide adequate assurances against localized HAP increases.

Public commenters on the State rulemaking for these rules noted these issues concerning localized increases in HAP concentrations and focused on an analogous issue, namely that trading might lead to overall increases in emissions of hazardous air pollutants. In essence, these commenters were concerned that trading might yield emission increases for the subset of the VOC components that are hazardous, notwithstanding the mandated reduction of VOC as a whole.

Increases in area-wide emissions of hazardous air pollutants are just as unlikely as increases of VOC or hazardous air pollutant emissions in localized areas, again because most sources' emissions will be decreasing and because an increase in HAPs at any particular source would presumptively involve an improbable shift in the proportion of emissions that are hazardous. Nevertheless, in response to these concerns, the trading rules provide for IEPA to evaluate the impacts of trades on HAP emissions and report its findings in a periodic program review. This program review is also required to identify any geographic redistributions of emissions occurring under the program, such as redistributions that would cause environmental justice concerns. Given this safeguard, if indeed Illinois commits to remedy any problems identified in its review, and given the minimal likelihood that such problems would arise, the Illinois trading program should have a favorable impact on HAP concentrations area-wide as well as in localized areas.

Does the Program Assure Satisfaction of New Source Requirements?

As noted previously, Illinois' trading rules explicitly provide in general that other State and Federal rules, which implement various Clean Air Act requirements such as RACT, MACT, and lowest achievable emission rate, must be satisfied and are unaffected by the trading rules. The only requirement under other rules that is significantly affected by the rules for the Illinois trading program is the requirement for offsets for new sources. Therefore, the review for consistency with the Clean Air Act needs only to address whether the alternative approach to offsets under these rules satisfies applicable requirements.

As discussed in the program description above, the trading rules provide that new sources and sources undergoing major modifications must purchase ATUs (representing emission reductions elsewhere) equivalent to at least 1.3 times the new emissions. This approach provides offsets that are generally equivalent to the traditional approach. However, a detailed comparison reveals important differences in the two approaches.

Offsets under the trading rule differ from conventional offsets in three key respects: (1) Trading rule offsets need only offset actual emissions, whereas conventional offsets must offset potential emissions; (2) trading rule offsets may be arranged essentially contemporaneously, whereas conventional offsets are arranged prior to issuance of the new source's permit to construct; and (3) trading rule offsets focus on ozone season emissions, whereas conventional offsets address the full year's emissions.

The first issue is whether offsetting of actual rather than potential emissions satisfies the basic requirement in Section 173, as quoted above, to assure that the sum of the emissions allowed

from existing sources plus the new source is suitably reduced. Ordinarily, this assurance is provided by requiring reductions in existing source emissions that more than compensate for the full allowable quantity of new emissions from the new source. The trading program uses a different approach. The trading program directly regulates the sum of actual emissions from all major existing and new sources. The number of ATUs issued is effectively a cap on overall actual emissions from major sources in the Chicago area. No additional ATUs are issued to new or modified sources. Consequently, when a new source obtains the required 1.3 tons worth of ATUs per ton of new emissions, then the source or sources selling the ATUs have necessarily achieved 1.3 tons of emission reductions to offset each ton of the new source's emissions. That is, the Illinois program requires a net reduction of 0.3 tons per ton of new emissions in the total allowable emissions from existing plus new sources in the Chicago area. Thus, despite the focus on actual rather than potential emissions, the Illinois trading program nevertheless satisfies the relevant net reduction requirement.

Another perspective on this issue is to view the use of actual versus potential emissions as a reflection of how the offsets are administered. For conventional offsets, there is one opportunity to establish offsetting emission reductions, during issuance of the construction permit before the source is constructed. In those circumstances, the permit must provide sufficient offsets to offset as much new emissions as the new source will ever emit, *i.e.*, the new source's potential emissions. In contrast, the trading rule provides opportunities recurring on an annual basis to reassess the quantity of emissions to be offset. The trading rule relies on this annual reassessment to assure that the new source obtains enough offsets each year to offset its emissions adequately.

A second difference between offsets under the trading program and conventional offsets is the timing by which the offsets are arranged. Section 173 requires that "sufficient offsetting emission reductions have been obtained" "by the time the source is to commence construction." (The clauses in Section 173 are reversed here.) Ordinarily, the construction permit identifies the offsets. In Illinois' trading program, the construction permit restates the requirement to hold ATUs sufficient to offset (at a 1.3 to 1 ratio) the emissions attributable to the major new source or major modification. USEPA views this as satisfying the requirement to provide assurances prior to construction that the new emissions will be suitably offset. Illinois further requires new sources to identify how they plan to obtain offsets for the first three years of operation, which increases the likelihood in practice that new sources will make permanent arrangements for offsets similar to the unavoidably permanent arrangements for conventional offsets.

The third difference from conventional offsets is the seasonality of offsets under the Illinois trading program. Offsets under the trading rule are achieved by obtaining ATUs. These ATUs represent ozone season emissions, and must be obtained in proportion to ozone season emissions of the new source or major modification. This differs from the conventional focus on increases and decreases of annual emissions. In most cases the two approaches will have about the same effect, because the off-season new emissions will typically have about the same ratio to on-season new emissions as the off-season to on-season ratio of offsetting emission reductions. For example, if the new source emits 10 tons per month and the offsetting source reduces emissions by 13 tons per month, then there is no practical difference between tallying 50 new tons against 65 tons of reductions for a 5-month ozone season versus tallying 120 new tons versus 156 tons of reductions for the full year. However, seasonal distributions of emissions can vary, so USEPA must assess whether an approach that focuses on ozone season emissions satisfies applicable requirements.

Section 173, as quoted above, requires offsets to reduce "total emissions" sufficiently to achieve reasonable further progress toward attaining the relevant standard. One possible interpretation of this requirement is that one evaluates the total of all emissions that are germane to assessing whether reasonable further progress is occurring, in which case one would take the Illinois approach of focusing on ozone season emissions. However, USEPA views the term "total" in Section 173 to include all emissions from all times of the year, so that one must assess whether emission reductions (occurring in any part of the year) sufficiently offset the full year's new emissions, irrespective of the seasonal definition of reasonable further progress used in other contexts.

In short, the Illinois trading program provides offsets on the basis of ozone season emissions, but USEPA interprets Section 173 to require offsets on a full year basis. USEPA views this feature of the Illinois trading program as a significant deficiency that Illinois must correct before USEPA can fully approve the program.

The Illinois trading program clearly provides for satisfaction of other new source review requirements. New emissions must be offset permanently. Because the Illinois trading program and its ATU holding requirement are permanent, USEPA views the trading program as mandating permanent offsetting of new emissions. Sources must obtain offsets from the same nonattainment area or from other areas meeting certain criteria. The Illinois trading program operates only within the Chicago nonattainment area, so offsets for new Chicago area sources would derive entirely from other sources in the Chicago area. Other new source requirements, including lowest achievable emission rates, compliance by other sources having the same owner, and criteria for determining the applicability of these requirements, are all unaffected by the Illinois trading program. Therefore, USEPA proposes to find that Illinois will continue to satisfy previously satisfied Clean Air Act requirements if offsets are provided on a full year basis.

Will Illinois Identify and Resolve Program Problems That Arise?

Because trading programs have a variety of designs and because we have little experience with these programs, USEPA guidance calls for trading programs to undertake periodic program evaluations and to remedy any problems that are identified.

Illinois' trading rules require an annual program review. This program review is available to the public. However, IEPA has not described how it will distribute this review and has not committed to pursue remedies if problems are identified. The pursuit of remedies is implicit in the requirement for annual program review. Nevertheless, in accordance with USEPA guidance, Illinois must provide an explicit commitment that it will provide the public suitable opportunity to comment on program implementation and that it will pursue remedies for any problems that the annual program review identifies.

V. USEPA Review of Expected Emission Reduction

How Much Emission Reduction Will Be Achieved?

The Illinois trading rules are clearly designed to achieve an overall reduction approaching 12 percent of the emissions of the major sources in the Chicago area.

Most sources are issued ATUs equal to 12 percent less than their baseline emissions. Trades of these ATUs would shift which source achieves the emission reduction without changing the net total emission reduction achieved.

Features that affect the quantity of reduction to be achieved are: (1) Exemptions from the 12 percent reduction for specified classes of well controlled sources, (2) exemptions from the program for sources that submit to a limitation of 15 tons of emissions per ozone season and for sources that reduce emissions by 18 percent, (3) differences between baseline emissions and average emissions, (4) availability of a reserve account of ATUs equal to one percent of total baseline emissions, and (5) surcharges of ATUs that sources that emit in excess of their ATU holdings must purchase or not be issued. Many of the quantitative influences on the emission reductions to be achieved by this program are difficult to assess. The numbered paragraphs below address the impact of each of these features.

1. USEPA asked Illinois for clarification of the number of ATUs that would be issued to sources that are exempted from the 12 percent reduction in ATUs issued based on being well controlled. By letter of June 18, 1998, Illinois clarified that emission units that are found to be controlled with best available technology by May 1, 1999, for example, are to be issued ATUs reflecting emissions achieved by the best available technology, without adjustments that would otherwise apply. This means that the number of ATUs issued could be more or less than 12 percent below baseline emissions, depending on whether the extra controls achieve less or more than 12 percent emission reductions. As a result, the net effect of this exemption will likely be small.

2. Only a slight loss of emission reduction will likely result from sources opting out of the program via a 15 ton per season limit, and only a slight gain of emission reduction will likely result from sources opting out via an 18 percent reduction. USEPA has no precise estimate of these effects but expects the net effect to be small.

3. USEPA also has no precise estimates of differences between baseline emissions and average emissions. To investigate this issue, we obtained values of an index of midwest industrial production data prepared monthly by the Chicago Federal Reserve Board. We used this index because Chicago area industrial emissions should fluctuate in the same manner as midwest industrial production. We focused on values for the five months in Illinois' program. "Average" production reflected 1994 to 1996 values for these five months, and "baseline" production reflected the average for the higher two of these 3 years (1995 and 1996).

The index value for "baseline" production was 0.7 percent higher than the index value for "average" production. Consequently, USEPA estimates that baseline emissions under Illinois' program are 0.7 percent above average emissions, and so USEPA is subtracting 0.7 percent in its estimate of emission reductions required by Illinois' program.

USEPA recognizes that the Chicago Federal Reserve Board index, as a composite statistic, does not directly address the difference between average versus higher two of three that would be found by examining data on a source-by-source basis. Nevertheless, USEPA believes that the production index shows qualitatively that the difference is relatively small. Since source-specific data are unavailable, USEPA proposes to use the production index to adjust the estimate of the reductions that Illinois' program will achieve.

4. Illinois issues ATUs equal to 1 percent of baseline emissions to an "Alternative Compliance Market Account." These ATUs are expensive, generally priced at the lesser of $10,000 per ton or 1.5 times the normal market price of ATUs. The emission reduction required by the Illinois trading program will be reduced to the extent that sources purchase ATUs from this account rather than from other sources. Thus, this feature will subtract between 0 and 1 percent of the reduction that the Illinois trading program requires.

5. When a source has a shortfall in its December 31 ATU holdings relative to its emissions that ozone season, it must provide ATUs equal to 120 percent of its shortfall. This provides a net 20 percent benefit to the environment. However, few sources are expected to have shortfalls, so this effect is likely to be small.

Illinois forecasted the emission reduction from its trading program by examining data in its emissions data base for major sources. This examination identified which sources would likely be subject to the program, preliminarily assessed which emission units at these sources would likely be exempted from the 12-percent reduction requirement (particularly because of implementation of MACT), and evaluated the total emissions which would be subject to a 12-percent reduction. Illinois thereby estimated that its trading program would reduce VOC emissions in the Chicago area by 12.6 tons per year.

Illinois has developed a reasonable inventory of sources to be subject to the trading program. However, Illinois overlooked two factors which could significantly affect emission reductions to be expected from the program. First, the issuance of ATUs equal to 1 percent of baseline emissions to the Alternative Compliance Market Account means that the program may reduce emissions only to 11 percent instead of 12 percent below baseline emissions. Second, as discussed above, baseline emissions are estimated to be about 0.7 percent higher than average emissions. Thus, 11 percent below baseline emissions would be about 10.4 percent below average emissions.

Consequently, USEPA estimates that Illinois' trading program will reduce emissions by 10.4 percent of the 105 tons per day emitted by sources in the program, or 10.9 tons per day. The actual reduction may be higher, to the extent that the Alternative Compliance Market Account goes unused and to the extent that surcharges are imposed on sources holding insufficient ATUs on December 31. The reduction will likely be higher in the first few years, while sources build up a reserve of ATUs, though this effect is likely to be minimal after a few years. The actual reduction may be lower, to the extent that the above analysis understates the difference between baseline and average emissions and to the extent that sources under 15 tons per ozone season obtain exemptions from the program. The reduction could be either slightly higher or slightly lower, depending on differences between well controlled emission levels and 12 percent below baseline levels. Nevertheless, despite the uncertainties in any estimate of program benefits, USEPA believes that Illinois' trading program will reduce VOC emissions in the Chicago area by about 10.9 tons per day.

The generation of ATUs is complicated in some cases by the difficulty of estimating the quantity of emission reductions. This is especially the case for programs to reduce highway vehicle emissions, for which the reductions are generally a function of a complicated array of variables. For example, the effect of programs for getting old cars off the road is influenced by the age mix of the cars being scrapped and the age mix of the cars being driven instead as well as collateral effects on miles driven, and is variable with time as the foregone mileage of the scrapped cars declines. USEPA anticipates being fully consulted on the quantification of emission

reductions from programs that reduce highway vehicle emissions as a means of generating ATUs. In any case, the uncertainty in these emission estimates is no more likely to yield either greater or lesser reductions, and the net effect is expected to be small.

Can False Credits Arise From "Demand Shifting"?

"Demand shifting" involves redistribution of production from one source to another. Demand shifting is a problem if credits are generated by the reduction in production at the first source and no credits are consumed by the production increase at the second source, since credits for emission reductions would be created where no net emission reduction has occurred. Illinois' program authorizes generation of ATUs via emission reductions at small industrial sources and at other sources including mobile sources and commercial operations.

For small industrial sources, the Illinois trading rules explicitly prohibit issuance of ATUs for small source production declines when that source's production might shift to another small source in the Chicago area. (Production shifts to large sources raise no problems, because large sources are required to hold ATUs to accommodate any increased production.) Therefore, the Illinois rules prevent the "demand shifting" problem for small industrial sources.

For commercial and mobile sources, Illinois' rules do not explicitly address the demand shifting issue. The IEPA is responsible for judging the quantity of emission reductions that a proposed control program will achieve (or has achieved). However, the rule does not require adjusting the emission reduction quantity to account for shifting of the relevant activity to other similar sources, nor has IEPA committed to make such an adjustment.

USEPA believes that Illinois' trading program should be approved only if Illinois commits to adjust any amounts of ATUs issued for commercial or mobile source emission reductions to reflect potential "demand shifting" or otherwise satisfactorily addresses this issue. The need for such a commitment or other resolution of this issue reflects the significant impact that could result from failure to account for the full consequences of proposed control programs for these types of sources.

Can "Spiking" be a Problem?

"Spiking" refers to the possibility that several years of low emissions would be followed by a year of exceptionally high emissions. This is possible in programs like Illinois' that allow "banking" of credits, wherein credits not used in the low emission years can be reserved for use in a later year to allow high emissions. Illinois' ATUs have a two year life, so a source that for several years emits below its allotment level would increasingly be using year-old ATUs and reserving same-year ATUs, until ultimately in theory the source could hold two years of allotments that it could use in one year. Note that this scenario necessarily involves below average emissions in the year or years preceding the exceptionally high emission year.

Spiking is most problematic when high emissions are more likely to occur during critical air pollution episodes than low emissions. This was possible with USEPA's "NO_X SIP Call", for example, where USEPA was concerned that above average electrical generation and nitrogen oxides (NO_X) emissions might be more likely to occur during high temperature ozone episodes than during supposedly compensating periods of below average activity and emissions. This is not the case for the Illinois program, which addresses principally manufacturing operations that are not influenced by meteorology or other factors affecting air quality. As a result, in Illinois, just as a hypothetical year with much higher than average emissions is preceded by a year or years with correspondingly lower than average emissions, the relative worsening of air quality for the high emissions year compared to average conditions is likely to be the same as the relative improvement of air quality for the preceding low emissions years.

USEPA has proposed guidance for States to "include safeguards * * * to prevent emission spiking commensurate with the probability that spiking will occur." USEPA investigated the probability of spiking occurring in the Illinois program.

Because the Illinois program requires continued achievement of RACT, sources have little latitude to cause spiking by varying control efficiencies. Instead, spiking is only plausible if "spiking" in production levels occurs.

USEPA investigated the likelihood of significant variations in production by analyzing the Chicago Federal Reserve Board's Midwest production index referenced above. The Chicago area has a diverse manufacturing base, so the variability of Midwest production is indicative of the variability of the production of major VOC sources in the Chicago area. The index is available for 1973 to 1998. Again USEPA examined the average index value for the five ozone season months. Of the 25 comparisons of consecutive year index averages, the index never changed by as much as 20 percent, dropped between 12 and about 18 percent in 3 years, increased by about 16 percent in 1 year, and stayed within about 10 percent for the remaining 21 years.

USEPA concludes that spiking is unlikely to occur in the Illinois program. Nevertheless, USEPA expects Illinois to report in its annual program review whether a significant stockpile of ATUs is being banked and if so to take corrective action as appropriate.

VI. Today's Action

What Action Is USEPA Proposing To Take?

USEPA proposes to approve the Illinois trading program if Illinois provides five commitments or program revisions identified in this notice. Today's notice solicits comments on these proposed prerequisites for program approval as well as on other issues raised by Illinois' submittal and USEPA's review. USEPA believes that submittal of these materials will not raise any new issues not addressed in today's notice. Therefore, USEPA anticipates that submittal of these materials will not necessitate further proposed rulemaking.

What Further Commitments and Program Revisions is USEPA Proposing To Require From Illinois?

USEPA proposes to approve Illinois' trading program only if Illinois submits five items:

1. Illinois must describe the timeline for sources to obtain the necessary number of ATUs. This description must identify a deadline after which Section 113 enforcement actions may be pursued.

2. Illinois must satisfy USEPA's policy on environmental justice as described in the proposed trading program guidance announced on September 15, 1999, at 64 FR 50086. This requires Illinois to commit to review effects of the trading program on the distribution of hazardous air pollutant emissions in its annual program review, distribute that review for public comment, and commit to address any identified problems.

3. Illinois must modify its new source requirements to provide offsets (at a 1.3 to 1 ratio, optionally from off-season emission reductions) for potential off-season VOC emissions of any major new source or major modification, to supplement the offsets that the trading program provides for on-season emissions.

4. Illinois must commit to discount or prohibit issuance of ATUs for commercial or mobile source emission reductions when the reduction is attributable to an activity level decrease that may accompany an increase in the level of that activity elsewhere in the Chicago area ("demand shifting").

5. Illinois must commit to address any problems that are identified in its annual program review.

VII. Administrative Requirements

Executive Order 12866

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

Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that USEPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

Executive Order 13084

Under Executive Order 13084, USEPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or USEPA consults with those governments. If USEPA complies by consulting, Executive Order 13084 requires USEPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of USEPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires USEPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires USEPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, USEPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or USEPA consults with State and local officials early in the process of developing the proposed regulation. USEPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

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

Regulatory Flexibility

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

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

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

USEPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action

proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

National Technology Transfer and Advancement Act

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Reporting recordkeeping requirements, Volatile organic compounds.

Dated: December 15, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–32945 Filed 12–26–00; 8:45 am]

BILLING CODE 6560–50–U

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

40 CFR Part 1602

Privacy Act of 1974; Implementation

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Proposed rule.

SUMMARY: The Chemical Safety and Hazard Investigation Board proposes to adopt regulations for handling requests made under the Privacy Act. The Privacy Act requires Federal agencies to create regulations establishing procedures for its implementation. These regulations will ensure the proper handling and preservation of agency records subject to the Privacy Act.

DATES: Submit comments on or before January 26, 2001.

ADDRESSES: Address all comments concerning this proposed rule to Christopher Kirkpatrick, Chemical Safety and Hazard Investigation Board, 2175 K Street, NW., Suite 400, Washington, DC 20037–1809.

FOR FURTHER INFORMATION CONTACT: Christopher Kirkpatrick, 202–261–7619.

SUPPLEMENTARY INFORMATION: These proposed regulations implement the Privacy Act of 1974, 5 U.S.C. 552a. The Board proposes the following set of regulations to discharge its responsibilities under the Privacy Act. The Privacy Act establishes: basic procedures for individuals' access to all records in systems of records maintained by the Chemical Safety and Hazard Investigation Board ("CSB" or "Board") that are retrieved by an individual's name or personal identifier. These proposed rules describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those records by the CSB. The Board invites comments from interested groups and members of the public on these proposed regulations.

Regulatory Flexibility Act

The Board, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this proposed regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, the Board did not deem any action necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, 109 Stat. 48.

List of Subjects in 40 CFR Part 1602

Administrative practice and procedure, Privacy.

For the reasons set forth in the preamble, the Chemical Safety and Hazard Investigation Board proposes to add a new 40 CFR Part 1602 to read as follows:

PART 1602—PROTECTION OF PRIVACY AND ACCESS TO INDIVIDUAL RECORDS UNDER THE PRIVACY ACT OF 1974

Sec.

Authority: 5 U.S.C. 552a, 553; 42 U.S.C. 7412 *et seq.*

§ 1602.1 General provisions.

(a) *Purpose and scope.* This part contains the rules that the Chemical Safety and Hazard Investigation Board ("CSB" or "Board") follows under the Privacy Act of 1974, 5 U.S.C. 552a. These rules should be read together with the Privacy Act, which provides additional information about records maintained on individuals. The rules in this part apply to all records in systems of records maintained by the CSB that are retrieved by an individual's name or personal identifier. They describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those records by the CSB. In addition, the CSB processes all Privacy Act requests for access to records under the Freedom of Information Act (FOIA), 5 U.S.C. 552, following the rules contained in part 1601 of this chapter, which gives requests the benefit of both statutes.

(b) *Definitions.* As used in this part:

Requester means an individual who makes a request for access, a request for amendment or correction, or a request for an accounting under the Privacy Act.

Request for access to a record means a request made as described in subsection (d)(1) of the Privacy Act, 5 U.S.C. 552a.

Request for amendment or correction of a record means a request made as described in subsection (d)(2) of the Privacy Act, 5 U.S.C. 552a.

Request for an accounting means a request made as described in subsection (c)(3) of the Privacy Act, 5 U.S.C. 552a.

§ 1602.2 Requests for access to records.

(a) *How made and addressed.* You may make a request for access to a CSB record about yourself by appearing in person or by writing to the CSB. Your request should be sent or delivered to the CSB's General Counsel, at 2175 K Street, NW, 4th Floor, Washington, DC 20037. For the quickest possible handling, you should mark both your request letter and the envelope "Privacy Act Request."

(b) *Description of records sought.* You must describe the records that you want in enough detail to enable CSB personnel to locate the system of records containing them with a reasonable amount of effort. Whenever possible, your request should describe the records sought, the time periods in which you believe they were compiled, and the name or identifying number of each system of records in which you believe they are kept. The CSB publishes notices in the **Federal Register** that describe its systems of records. A description of the CSB's systems of records also may be found as part of the "Privacy Act Compilation" published by the National Archives and Records Administration's Office of the **Federal Register**. This compilation is available in most large reference and university libraries. This compilation also can be accessed electronically at the Government Printing Office's World Wide Web site (which can be found at http://www.access.gpo.gov/su_docs).

(c) *Agreement to pay fees.* If you make a Privacy Act request for access to records, it shall be considered an agreement by you to pay all applicable fees charged under § 1602.9 up to $25.00. The CSB ordinarily will confirm this agreement in an acknowledgment letter. When making a request, you may specify a willingness to pay a greater or lesser amount.

(d) *Verification of identity.* When you make a request for access to records about yourself, you must verify your identity. You must state your full name, current address, and date and place of birth. You must sign your request and your signature must either be notarized or submitted by you under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. In order to help the identification and location of requested records, you may also, at your option, include your social security number.

(e) *Verification of guardianship.* When making a request as the parent or guardian of a minor or as the guardian of someone determined by a court to be incompetent, for access to records about that individual, you must establish:

(1) The identity of the individual who is the subject of the record, by stating the name, current address, date and place of birth, and, at your option, the social security number of the individual;

(2) Your own identity, as required in paragraph (d) of this section;

(3) That you are the parent or guardian of that individual, which you may prove by providing a copy of the individual's birth certificate showing your parentage or by providing a court order establishing your guardianship; and

(4) That you are acting on behalf of that individual in making the request.

§ 1602.3 Responsibility for responding to requests for access to records.

(a) *In general.* In determining which records are responsive to a request, the CSB ordinarily will include only those records in its possession as of the date the CSB begins its search for them. If any other date is used, the CSB will inform the requester of that date.

(b) *Authority to grant or deny requests.* The CSB's General Counsel, or his/her designee, is authorized to grant or deny any request for access to a record of the CSB.

(c) *Consultations and referrals.* When the CSB receives a request for access to a record in its possession, it will determine whether another agency of the Federal Government is better able to determine whether the record is exempt from access under the Privacy Act. If the CSB determines that it is best able to process the record in response to the request, then it will do so. If the CSB determines that it is not best able to process the record, then it will either:

(1) Respond to the request regarding that record, after consulting with the agency best able to determine whether the record is exempt from access and with any other agency that has a substantial interest in it; or

(2) Refer the responsibility for responding to the request regarding that record to another agency that originated the record (but only if that agency is subject to the Privacy Act). Ordinarily, the agency that originated a record will be presumed to be best able to determine whether it is exempt from access.

(d) *Notice of referral.* Whenever the CSB refers all or any part of the responsibility for responding to your request to another agency, it ordinarily will notify you of the referral and inform you of the name of each agency to which the request has been referred and of the part of the request that has been referred.

(e) *Timing of responses to consultations and referrals.* All consultations and referrals shall be handled according to the date the Privacy Act access request was initially received by the CSB, not any later date.

§ 1602.4 Responses to requests for access to records.

(a) *Acknowledgments of requests.* On receipt of your request, the CSB ordinarily will send an acknowledgment letter, which shall confirm your agreement to pay fees under § 1602.2(c) and may provide an assigned request number for further reference.

(b) *Grants of requests for access.* Once the CSB makes a determination to grant your request for access in whole or in part, it will notify you in writing. The CSB will inform you in the notice of any fee charged under § 1602.9 and will disclose records to you promptly on payment of any applicable fee. If your request is made in person, the CSB may disclose records to you directly, in a manner not unreasonably disruptive of its operations, on payment of any applicable fee and with a written record made of the grant of the request. If you are accompanied by another person when you make a request in person, you shall be required to authorize in writing any discussion of the records in the presence of the other person.

(c) *Adverse determinations of requests for access.* If the CSB makes an adverse determination denying your request for access in any respect, it will notify you of that determination in writing. Adverse determinations, or denials of requests, consist of: a determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that what has been requested is not a record subject to the Privacy Act; a determination on any disputed fee matter; and a denial of a request for expedited treatment. The notification letter shall be signed by the General Counsel, or his/her designee, and shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason(s) for the denial, including any Privacy Act exemption(s) applied by the CSB in denying the request; and

(3) A statement that the denial may be appealed under § 1602.5(a) and a description of the requirements of § 1602.5(a).

§ 1602.5 Appeals from denials of requests for access to records.

(a) *Appeals.* If you are dissatisfied with the CSB's response to your request for access to records, you may appeal an adverse determination denying your request in any respect to the Privacy Act Appeals Officer of the CSB, 2175 K Street, NW., Suite 400, Washington, DC 20037. You must make your appeal in writing, and it must be received within 60 days of the date of the letter denying your request. Your appeal letter may include as much or as little related information as you wish, as long as it clearly identifies the determination (including the assigned request number,

if any) that you are appealing. For the quickest possible handling, you should mark both your appeal letter and the envelope "Privacy Act Appeal."

(b) *Responses to appeals.* The decision on your appeal will be made in writing. A decision affirming an adverse determination in whole or in part will include a brief statement of the reason(s) for the affirmance, including any Privacy Act exemption applied, and will inform you of the Privacy Act provisions for court review of the decision. If the adverse determination is reversed or modified on appeal in whole or in part, you will be notified in a written decision and your request will be reprocessed in accordance with that appeal decision.

(c) *When appeal is required.* If you wish to seek review by a court of any adverse determination or denial of a request, you must first appeal it under this section.

§ 1602.6 Requests for amendment or correction of records.

(a) *How made and addressed.* You may make a request for amendment or correction of a CSB record about yourself by following the procedures in § 1602.2. Your request should identify each particular record in question, state the amendment or correction that you want, and state why you believe that the record is not accurate, relevant, timely, or complete. You may submit any documentation that you think would be helpful.

(b) *CSB responses.* Within ten working days of receiving your request for amendment or correction of records, the CSB will send you a written acknowledgment of its receipt of your request, and it will promptly notify you whether your request is granted or denied. If the CSB grants your request in whole or in part, it will describe the amendment or correction made and advise you of your right to obtain a copy of the corrected or amended record. If the CSB denies your request in whole or in part, it will send you a letter stating:

(1) The reason(s) for the denial; and

(2) The procedure for appeal of the denial under paragraph (c) of this section, including the name and business address of the official who will act on your appeal.

(c) *Appeals.* You may appeal a denial of a request for amendment or correction in the same manner as a denial of a request for access to records (see § 1602.5), and the same procedures will be followed. If your appeal is denied, you will be advised of your right to file a Statement of Disagreement as described in paragraph (d) of this section and of your right under the Privacy Act for court review of the decision.

(d) *Statements of Disagreement.* If your appeal under this section is denied in whole or in part, you have the right to file a Statement of Disagreement that states your reason(s) for disagreeing with the CSB's denial of your request for amendment or correction. Statements of Disagreement must be concise, must clearly identify each part of any record that is disputed, and should be no longer than one typed page for each fact disputed. Your Statement of Disagreement must be sent to the CSB, which will place it in the system of records in which the disputed record is maintained and will mark the disputed record to indicate that a Statement of Disagreement has been filed and where in the system of records it may be found.

(e) *Notification of amendment/correction or disagreement.* Within 30 working days of the amendment or correction of a record, the CSB shall notify all persons, organizations, or agencies to which it previously disclosed the record, if an accounting of that disclosure was made, that the record has been amended or corrected. If an individual has filed a Statement of Disagreement, the CSB will attach a copy of it to the disputed record whenever the record is disclosed and may also attach a concise statement of its reason(s) for denying the request to amend or correct the record.

§ 1602.7 Requests for an accounting of record disclosures.

(a) *How made and addressed.* Except where accountings of disclosures are not required to be kept (as stated in paragraph (b) of this section), you may make a request for an accounting of any disclosure that has been made by the CSB to another person, organization, or agency of any record about you. This accounting contains the date, nature, and purpose of each disclosure, as well as the name and address of the person, organization, or agency to which the disclosure was made. Your request for an accounting should identify each particular record in question and should be made by writing to the CSB, following the procedures in § 1602.2.

(b) *Where accountings are not required.* The CSB is not required to provide accountings to you where they relate to disclosures for which accountings are not required to be kept—in other words, disclosures that are made to employees within the agency and disclosures that are made under the FOIA.

(c) *Appeals.* You may appeal a denial of a request for an accounting to the CSB Appeals Officer in the same manner as a denial of a request for access to records (see § 1602.5) and the same procedures will be followed.

§ 1602.8 Preservation of records.

The CSB will preserve all correspondence pertaining to the requests that it receives under this part, as well as copies of all requested records, until disposition or destruction is authorized by Title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the Privacy Act.

§ 1602.9 Fees.

The CSB will charge fees for duplication of records under the Privacy Act in the same way in which it charges duplication fees under the FOIA (see part 1601, subpart D of this chapter). No search or review fee will be charged for any record.

§ 1602.10 Notice of court-ordered and emergency disclosures.

(a) *Court-ordered disclosures.* When a record pertaining to an individual is required to be disclosed by a court order, the CSB will make reasonable efforts to provide notice of this to the individual. Notice will be given within a reasonable time after the CSB's receipt of the order—except that in a case in which the order is not a matter of public record, the notice will be given only after the order becomes public. This notice will be mailed to the individual's last known address and will contain a copy of the order and a description of the information disclosed.

(b) *Emergency disclosures.* Upon disclosing a record pertaining to an individual made under compelling circumstances affecting health or safety, the CSB will notify that individual of the disclosure. This notice will be mailed to the individual's last known address and will state the nature of the information disclosed; the person, organization, or agency to which it was disclosed; the date of disclosure; and the compelling circumstances justifying the disclosure.

Dated: December 19, 2000.

Christopher W. Warner,

General Counsel.

[FR Doc. 00–32948 Filed 12–26–00; 8:45 am]

BILLING CODE 6350–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412 and 413

[HCFA–1069–N]

RIN 0938–AJ55

Medicare Program; Prospective Payment System for Inpatient Rehabilitation Facilities; Extension of Comment Period

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of extension of comment period for proposed rule.

SUMMARY: This notice extends the comment period on a proposed rule published in the **Federal Register** on November 3, 2000 (65 FR 66304). That rule would implement section 1886(j) of the Social Security Act (the Act), as added by section 4421 of the Balanced Budget Act of 1997 (Public Law 105–33) and as amended by section 125 of the Balanced Budget Refinement Act of 1999 (Public Law 106–113). Section 1886(j) of the Act authorizes the implementation of a prospective payment system for inpatient rehabilitation hospitals and inpatient rehabilitation units.

DATES: The comment period is extended to 5 p.m. on February 1, 2001.

ADDRESSES: Mail written comments (one original and three copies) to the following address ONLY: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1069–P, P.O. Box 8010, Baltimore, MD 21244–8010.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1069–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to: Health Care Financing Administration, Office of Information Services, Standards and Security Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attn.: Julie Brown HCFA 1069–P; and Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn.: Allison Eydt, HCFA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Robert Kuhl, (410) 786–4597.

SUPPLEMENTARY INFORMATION: On November 3, 2000, we issued a proposed rule in the **Federal Register** (65 FR 66304) that provided information for understanding the development and implementation of the inpatient rehabilitation facility (IRF) prospective payment system (PPS). That information included the following:

- An overview of the current payment system for IRFs.
- A discussion of research on IRF patient classification systems and prospective payment systems, including prior and current research performed by the RAND Corporation.
- A discussion of statutory requirements for developing and implementing an IRF PPS.
- A discussion of the proposed requirement that IRFs complete the Minimum Data Set for Post Acute Care (MDS–PAC) (a patient assessment instrument) as a part of the data collection deemed necessary by the Secretary to implement and administer the IRF PPS.
- A discussion of the IRF patient classification system using case-mix groups (CMGs).
- A detailed discussion of the proposed PPS including the relative weights and payment rates for each CMG, adjustments to the payment system, additional payments, and budget neutrality requirements mandated by section 1886(j) of the Social Security Act.
- An analysis of the impact of the IRF PPS on the Federal budget and inpatient rehabilitation facilities, including small rural facilities.
- Proposed conforming changes to existing regulations as well as new regulations that are necessary to implement the proposed IRF PPS.

The comment period for the proposed rule is scheduled to close at 5 p.m. on January 2, 2001. However, due to the scope and complexity of this proposed rule, we are concerned that the public may not have adequate time to comment on the rule. Accordingly, we are now extending the comment period by 30 days. We will now accept comments on the proposed rule until 5 p.m. on February 1, 2001. We believe the revised date will allow sufficient time for the public to provide comments.

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: December 8, 2000.

Michael M. Hash,

Acting Administrator, Health Care Financing Administration.

Dated: December 20, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–32993 Filed 12–26–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 422

[HCFA–1160–P]

RIN 0938–AK41

Medicare Program; Requirements for the Recredentialing of Medicare+Choice Organization Providers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the requirement of recredentialing providers, who are physicians or other health care professionals, for Medicare+Choice Organizations (M+COs) from at least every 2 years to at least every 3 years. This change is consistent with managed care industry recognized standards of practice and quality, and with standards already adopted by nationally recognized private quality assurance accrediting organizations. The intent of this change is to simplify administrative requirements by retaining consistency with the private accrediting processes. This rule would benefit M+COs and providers within the M+COs who must be recredentialed, while continuing to address quality issues of Medicare beneficiaries.

DATES: We will consider comments if we receive them at the appropriate

address, as provided below, no later than 5 p.m. on January 26, 2001.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1160–P, P. O. Box 8018, Baltimore, MD 21244–8018.

To ensure that mailed comments are received in time for us to consider them, please allow for possible delays in delivering them.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244.

Comments mailed to the above addresses may be delayed and received too late for us to consider them.

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1160–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's office at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Siera Gollan, (410) 786–6664.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 1851 through 1859 of the Social Security Act (the Act) established a new Part C of the Medicare program, known as the "Medicare+Choice (M+C) Program." On June 26, 1998, we published a comprehensive interim final rule (63 FR 34968) in the **Federal Register** to implement the M+C Program. That interim final rule set forth the new M+C regulations in 42 CFR Part 422—Medicare+Choice Program. We published a subsequent final rule with comment period in the **Federal Register** on June 29, 2000 (65 FR 40170).

When these rules were promulgated, we established a 2-year recredentialing cycle consistent with standards adopted by nationally recognized private quality assurance accrediting organizations. Under § 422.204(b)(2)(ii), Medicare+Choice Organizations (M+COs) are required to recredential providers, who are physicians or other health care professionals (including members of physicians groups) at least every 2 years. The recredentialing updates information obtained during initial credentialing and considers performance indicators such as those collected through quality assurance programs, utilization management systems, handling of grievances and appeals, enrollment satisfaction surveys, other plan activities, and an attestation of the correctness and completeness of the new information.

Since the promulgation of these M+C rules, however, the nationally recognized private quality assurance accrediting organizations' standards for recredentialing have changed to a 3-year cycle. Therefore, our regulations are no longer consistent with standards adopted by these organizations. We believe that the change in the standards for recredentialing from a 2-year cycle to a 3-year cycle is appropriate because it lessens the administrative burdens on M+COs and their providers without negatively affecting Medicare beneficiaries or the Medicare program.

II. Provisions of this Proposed Regulation

We propose to change the recredentialing cycle requirement in § 422.204(b)(2)(ii) from at least a 2-year cycle to at least a 3-year cycle. This change would maintain consistency with managed care industry recognized standards of practice and quality, and is consistent with standards already adopted by nationally recognized private quality assurance accrediting organizations. Under this proposed change to the regulation, M+COs that wish to recredential on a 2-year cycle may continue to do so.

I. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements:

Section 422.204 (Provider selection and credentialing) requires recredentialing at least every 3 years that updates information obtained during initial credentialing and considers performance indicators such as those collected through quality assurance programs, utilization management systems, handling of grievances and appeals, enrollee satisfaction surveys, other plan activities, and an attestation of the correctness and completeness of the new information. While the criteria and timing of the recredentialing process is currently approved under OMB control number 0938–0753, the general recredentialing criteria of every 2 years is being revised to every 3 years.

If you comment on the information collection and recordkeeping requirements, please mail copies directly to the following:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Attn.: John Burke, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

IV. Regulatory Impact Statement

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980 Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule is not a major rule, as there are no additional costs to implement the one change that results from this proposed rule. Since the proposed rule changes the

recredentialing requirement from a 2-year to a 3-year cycle to remain consistent with the private accreditation processes, the regulation change decreases administrative costs for the health plan and the providers within the health plan.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. For purposes of the RFA, some M+COs are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. The proposed rule will not have an effect on State, local, or tribal governments, nor will the rule meet the $100 million threshold.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule does not impose any direct requirement costs on State or local governments.

B. Anticipated Effects

1. Effects on M+COs

The effect on M+COs will be to lessen the mandated recredentialing requirements to at least once every 3 years rather than the current requirement of at least once every 2 years. If the rule is not promulgated, Medicare M+COs would be required to recredential on a schedule that is different and more demanding for Medicare contractors than private contractors, adding an administrative complexity and cost without benefit. M+COs can maintain recredentialing more often at their option; this change simply addresses consistency with standards of private accreditation agencies.

2. Effects on Other Providers

Effects on other providers are limited, except that providers in M+COs will not be required to provide credentialing material at a greater frequency than they are required to provide it by the private accreditation agencies and the M+COs' individual corporate requirements.

3. Effects on the Medicare and Medicaid Programs

This rule makes no change to the Medicaid program. The rule simplifies the recredentialing mandated cycle for consistency with the private accreditation processes for Medicare M+COs. If the rule is not promulgated, a cycle inconsistent with the private accreditation organizations will require private accreditation organizations to change their cycle in order to be deemed for Medicare and require M+COs and their providers to undergo an additional administrative cost and process without identified benefit to Medicare beneficiaries or the Medicare program.

C. Alternatives Considered

The only other alternative would be to leave the regulation unchanged. To meet our goal to be consistent, when appropriate, with the standards of the private accreditation organizations, we decided that the change is necessary.

D. Conclusion

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule would not have a significant economic impact on a substantial number of small entities, or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the "DATES" section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

List of Subjects in 42 CFR Part 422

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Medicare+Choice, Penalties, Privacy, Provider-sponsored organizations (PSO), Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Health Care Financing Administration would amend 42 CFR chapter IV as follows:

PART 422—MEDICARE+CHOICE PROGRAM

1. The authority citation for part 422 is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Revise § 422.204(b)(2)(ii) to read as follows:

§ 422.204 Provider selection and credentialing.

* * * * *

(b) * * *

(2) * * *

(ii) Recredentialing at least every 3 years that updates information obtained during initial credentialing and considers performance indicators such as those collected through quality assurance programs, utilization management systems, handling of grievances and appeals, enrollee satisfaction surveys, other plan activities, and an attestation of the correctness and completeness of the new information; and

* * * * *

Authority: Secs. 1102, 1851 through 1857, 1859, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395w-21 through 1395w-27, and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 9, 2000.

Michael M. Hash,

Acting Administrator, Health Care, Financing Administration

Dated: November 28, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–32995 Filed 12–26–00; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 61 and 69

[CC Docket No. 96–262; DA 00–2866]

CLEC Access Charge Reform

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the deadline for filing comments in an ongoing FCC proceeding considering whether and how to reform the manner in which competitive local exchange carriers (CLECs) may tariff the charges for the switched local exchange access service that they provide to inter-exchange carriers (IXCs).

DATES: Submit comments on or before January 11, 2001. Submit reply comments on or before January 26, 2001.

ADDRESSES: Send comments to Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth St., S.W., Room TW–A325, Washington, DC 20554. Or comments may be filed electronically via the Internet at <http://www.fcc.gov/e-file/ecfs.html>.

FOR FURTHER INFORMATION CONTACT: Scott K. Bergmann, 202–418–0940, or Jeffrey H. Dygert, 202–418–1500.

SUPPLEMENTARY INFORMATION: On December 20, 2000, the FCC's Common Carrier Bureau (the Bureau) granted a motion for extension of time for parties to file comments and reply comments in response to Public Notice in CC Docket No. 96–262. *Common Carrier Bureau Grants Motion for Limited Extension of Time for Filing Comments and Reply Comments on Issues Relating to CLEC Access Charge Reform*, Public Notice, CC Docket No. 96–262, DA 00–2866 (rel. Dec. 20, 2000). This document summarizes that Public Notice.

On December 7, 2000, the Bureau released a Public Notice in CC Docket No. 96–262 inviting comment on issues related to CLEC access charge reform. *Common Carrier Bureau Seeks Additional Comment on Issues Relating to CLEC Access Charge Reform*, Public Notice, 65 FR 77545, DA 00–2751, CC Docket No. 96–262 (pub. Dec. 12, 2000) (*CLEC Access Charge Reform Notice*). Pursuant to the *CLEC Access Charge Reform Notice*, parties were required to file comments on or before December 27, 2000 and reply comments on or before January 11, 2001.

On December 14, 2000, Allegiance Telecom, Inc. filed a Motion for Extension of Time to extend the dates for filing comments and reply comments in response to the Public Notice. In its pleading, Allegiance requests that the deadlines for filing comments and reply comments be extended by fifteen (15) days.

It is the policy of the Commission that extensions of time are not routinely granted. In this instance, however, the Bureau finds that Allegiance has shown good cause for an extension of the deadline for filing comments and reply comments in this proceeding. Accordingly, interested parties may now file comments on or before January 11, 2001 and reply comments on or before January 26, 2001. This matter shall continue to be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. 47 CFR. 1.1200, 1206. All other requirements discussed in the *CLEC Access Charge Reform Notice* in this proceeding remain in effect.

List of Subjects

47 CFR Part 0

Organization and functions.

47 CFR Part 1

Administrative practice and procedures, Communications common carrier, telecommunications.

47 CFR Part 61

Communications common carriers, Tariffs.

47 CFR Part 69

Communications common carriers, Access charges.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–32926 Filed 12–26–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2832; MM Docket No. 00–250; RM–10025]

Radio Broadcasting Services; Alexandria and Sauk Centre, Minnesota

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission, at the request of Main Street Broadcasting, Inc., licensee of Station KMSR(FM), Sauk Centre, Minnesota, and BDI Broadcasting, Inc., licensee of Station KIKV–FM, Alexandria, Minnesota, proposes the substitution of Channel 232C3 for 232A at Sauk Centre, the reallotment of Channel 232C3 from Sauk Centre to Alexandria, and the modification of Station KMSR's license accordingly; and the reallotment of Channel 264C1 from Alexandria to Sauk Centre, and the modification of Station KIKV's license accordingly. Channel 232C3 can be allotted at Alexandria, Minnesota, in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, at petitioner's requested site 8.8 kilometers (5.5 miles) northwest of the community at coordinates 45–55–57 and 95–28–21. Additionally, Channel 264C1 can be reallotted from Alexandria to Sauk Centre in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, at a site 15.6 kilometers (9.7 miles) west of the community at coordinates 45–41–03 and 95–08–14.

DATES: Comments must be filed on or before February 5, 2001, and reply comments must be filed by February 20, 2001.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John Wells King, Esq., Garvey, Schubert and Barer 1000 Potomac Street, NW., Fifth Floor, Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No., adopted December 6, 2000, and released December 15, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in

Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b) the FM Table of Allotments under Minnesota is amended by removing Channel 232A and adding Channel 264C1 at Sauk Centre, and by removing Channel 264C1 and adding Channel 232C3 at Alexandria in numercial order.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–32791 Filed 12–26–00; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 65, No. 249
Wednesday, December 27, 2000

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

Food and Nutrition Service

Summer Food Service Program for Children Program Reimbursement for 2001

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the annual adjustments to the reimbursement rates for meals served in the Summer Food Service Program for Children (SFSP). These adjustments reflect changes in the Consumer Price Index and are required by the statute governing the Program. In addition, further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii, as authorized by the William F. Goodling Child Nutrition Reauthorization Act of 1998.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Melissa A. Rothstein, Section Chief, Summer Food Service Program and Child and Adult Care Food Program, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302, (703) 305–2620.

SUPPLEMENTARY INFORMATION: This program is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3518), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This notice is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. Additionally, this notice has been determined to be exempt from review by the Office of Management and Budget under Executive Order 12866.

Definitions

The terms used in this Notice shall have the meaning ascribed to them in the regulations governing the Summer Food Service Program for Children (7 CFR part 225).

Background

In accordance with section 13 of the National School Lunch Act (NSLA)(42 U.S.C. 1761) and the regulations governing the SFSP (7 CFR part 225), notice is hereby given of adjustments in Program payments for meals served to children participating in the SFSP in 2001. Adjustments are based on changes in the food away from home series of the Consumer Price Index (CPI) for All Urban Consumers for the period November 1999 through November 2000.

Section 104(a) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105–336) amended section 12(f) of the NSLA (42 U.S.C. 1760(f)) to allow adjustments to SFSP reimbursement rates to reflect the higher cost of providing meals in the SFSP in Alaska and Hawaii. Therefore, this notice contains adjusted rates for Alaska and Hawaii. This change was made in an effort to be consistent with other Child Nutrition Programs, such as the National School Lunch Program and the School Breakfast Program, which already had the authority to provide higher reimbursement rates for programs in Alaska and Hawaii.

The 2001 reimbursement rates, in dollars, for all States excluding Alaska and Hawaii:

MAXIMUM PER MEAL REIMBURSEMENT RATES FOR ALL STATES (NOT AK OR HI)

	Operating costs	Administrative costs	
		Rural or self-preparation sites	Other types of sites
Breakfast	$1.28	$.1275	$.1000
Lunch or Supper	2.23	.2325	.1925
Supplement	.52	.0625	.0500

The 2001 reimbursement rates, in dollars, for Alaska:

MAXIMUM PER MEAL REIMBURSEMENT RATES FOR ALASKA ONLY

	Operating costs	Administrative costs	
		Rural or self-preparation sites	Other types of sites
Breakfast	$2.07	$.2050	$.1625
Lunch or Supper	3.62	.3775	.3125
Supplement	.84	.1025	.0825

The 2001 reimbursement rates, in dollars, for Hawaii:

MAXIMUM PER MEAL REIMBURSEMENT RATES FOR HAWAII ONLY

	Operating costs	Administrative costs	
		Rural or self-preparation sites	Other types of sites
Breakfast	$1.49	$.1475	$.1175
Lunch or Supper	2.61	.2725	.2275
Supplement	.61	.0750	.0575

The total amount of payments to State agencies for disbursement to Program sponsors will be based upon these Program reimbursement rates and the number of meals of each type served. The above reimbursement rates, for both operating and administrative reimbursement rates, represent a 2.34 percent increase during 2000 (from 166.5 in November 1999 to 170.4 in November 2000) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The Department would like to point out that the SFSP administrative reimbursement rates continue to be adjusted up or down to the nearest quarter-cent, as has previously been the case. Additionally, operating reimbursement rates have been rounded down to the nearest whole cent, as required by section 11(a)(3)(B) of the NSLA (42 U.S.C. 1759 (a)(3)(B)).

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761, and 1762a).

Dated: December 20, 2000.

George A. Braley,

Acting Administrator.

[FR Doc. 00–32991 Filed 12–26–00; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Stamp Program: Research Grants to Improve Food Stamp Program Access

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of availability of research grants to improve Food Stamp Program Access through Partnerships and New Technology.

SUMMARY: The Food and Nutrition Service, USDA, announces a program of competitively awarded grants and cooperative agreements for research that will improve the administrative effectiveness of the Food Stamp Program (FSP) in delivering nutrition related benefits. Of particular interest are efforts that will assist potentially eligible customers in accessing the FSP. The grants will support research on the effects of community partnerships to reach underserved populations such as working families, children, immigrants, elderly and able-bodied adults without dependent children. This notice summarizes the objectives, the eligibility criteria, and the application procedures for these grants.

DATES: Applications must be received on or before 3:00 pm on January 5, 2001. Applications received after 3:00 pm, January 5, 2001, will not be considered for funding.

ADDRESSES: To obtain program grant application materials, and to submit completed applications, please contact the USDA, Food and Nutrition Service, Contract Management Branch, Room 220, 3101 Park Center Drive, Alexandria, Virginia 22302, Attn: Patsy Palmer. Grant application material can also be obtained at the Department's web site at *http://www.fns.usda.gov/fsp/GRANTS/ProgramAccess.HTM.*

FOR FURTHER INFORMATION CONTACT: Patricia Seward, Food Stamp Program, at 703–305–2428, or via Internet mail at pat.seward@fns.usda.gov.

SUPPLEMENTARY INFORMATION:

Legislative Authority

Under section 17(a)(1) of the Food Stamp Act of 1977, (the Act), 7 U.S.C. 2026(a)(1), the Food and Nutrition Service intends to make grants for research to improve FSP access and the education of potentially eligible non-participants about the nutrition and health benefits of the FSP. The Food and Nutrition Service expects to make available at least $3,000,000 but no more than $3,500,000 for Fiscal Year 2001 to fund competitive grants for research in the form of demonstration projects. The competitive grants will be awarded to encourage research by non-food stamp governmental authorities (*e.g.,* State/local school districts, public health clinics), cooperating nonprofit grassroots customer organizations, institutions of higher education (*e.g.,* 1890's Colleges and Universities), foundations and other non-profit research institutes. If a joint project is awarded, the grant award will be made to the lead agency or organization. Current Food and Nutrition Service grantees may compete under the requirements of the solicitation but not for extensions of previously funded projects. This solicitation is not intended to extend or continue previously funded projects.

Description of Research Projects

Research is a systematic inquiry, including demonstration projects, into a subject—in this case, ways to facilitate participation in the Food Stamp Program among people eligible for its benefits. The Food and Nutrition Service will conduct a competition for grants for research on measures that may identify and educate food stamp eligibles not currently participating in the program—including, but not limited to, the working poor, children, immigrants, elderly and able-bodied adults without dependent children—about the nutrition benefits, eligibility requirements, and application procedures of the FSP. The Food and Nutrition Service is seeking research that will produce information on the effectiveness of FSP program delivery with special emphasis on methods used to improve access to low-income families and individuals to the nutrition benefits of the FSP. The Food and Nutrition Service will analyze the information collected and reported by grantees at the end of the project. Such research projects could include:

- Informational and educational projects about the nutrition benefits, eligibility rules, and application procedures of the program;
- Projects testing the effects of assistance with the application procedures, including eligibility pre-screening services; and,
- New approaches such as "one-stop shopping" or joint client-oriented service delivery strategies.

We expect to receive proposals at various funding levels and expect to make awards up to $300,000 each, depending upon the number and quality of the proposals received. The duration of the research projects may be up to but may not exceed 24 months, depending upon the type and complexity of the

projects proposed. Successful applications will demonstrate one or more of the following characteristics:

- The feasibility for widespread replication if proven effective and efficient;
- Client-orientation research projects carried out by grassroots organizations or others with close ties to the target population groups mentioned above;
- Research designed to demonstrate joint public/private partnerships that deliver high quality customer service;
- Research that identifies critical barriers to food stamp participation among client group(s) and specific to overcome these barriers;
- Detailed information on the proposed research including research project design, staffing information, methods used, partnerships developed, timeframes, successes, and lessons learned; and,
- The capability of the subject of the research to be sustained with local resources beyond the grant period, and the transferability of the research results.

Eligibility

Applications may be submitted individually or jointly. The Food and Nutrition Service encourages project applications by non-food stamp governmental authorities (*e.g.*, State/local school districts, public health clinics), and/or cooperating nonprofit grassroots customer organizations. Applications must contain a thorough description of how and for whom the grant funds will be used for the entire period of the grant award. Grant applicants will be required to provide substantial descriptive documentation of their partnerships and letters of commitment or memoranda of understanding from all partner agencies/organizations.

Availability of Funds

A minimum of $3,000,000 and a maximum of $3,500,000 is available in Fiscal Year 2001 from FSP funds for this program. Grant awards will be made to successful proposers in Fiscal Year 2001. Project duration may extend beyond Fiscal Year 2001, but will not extend beyond 24 months from the date of award. The grant award will be 100 percent Federal funding with no matching requirement. Grant funds are not available for the conduct of studies or evaluations, although applicants are free to draw upon existing evaluations in designing their proposals. The Food and Nutrition Service may award competitive grants or cooperative agreements under this announcement. Applicants need not specify the type of award in their proposal. The Food and Nutrition Service reserves the right to determine the type of award based on the criteria set out in 31 U.S.C. 6305. Completion of the grant does not obligate the Food and Nutrition Service to a continued relationship, either financial or technical, with the grantee.

Authority: 7 U.S.C. 2026(a)(1).

Dated: December 20, 2000.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 00–32992 Filed 12–26–00; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on January 18, 2001, at Tahoe Seasons Resort, 3901 Saddle Rd., South Lake Tahoe, CA. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876) is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held January 18, 2001, beginning at 9 a.m. and ending at 4:30 p.m.

ADDRESSES: The meeting will be held at Tahoe Seasons Resort, 3901 Saddle Rd., South Lake Tahoe, CA.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson or Jeannie Stafford, Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Road Suite 1, South Lake Tahoe, CA 96150, (530) 573–2773.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executives Committees. Items to be covered on the agenda include: (1) Science Advisory Group presentation; (2) Budget Subcommittee reports; (3) urban lot management program; (4) threshold review; (5) Sierra Nevada Framework and/or Restoration Act; (6) adaptive management; (7) programmatic environmental review of the Environmental Improvement Project; and (8) public comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: December 19, 2000.

Maribeth Gustafson,

Forest Supervisor.

[FR Doc. 00–32877 Filed 12–26–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service (NRCS), Agriculture.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to issue a revised conservation practice standard in Section IV of the FOTG. The revised standard is Grassed Waterway (412). This practice may be used in conservation systems that treat highly erodible land and/or wetlands.

DATES: Comments will be received until on or before January 26, 2001.

ADDRESSES: Address all requests and comments to Jane E. Hardisty, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of this standard will be made available upon written request. You may submit your electronic requests and comments to darrell.brown@in.usda.gov.

FOR FURTHER INFORMATION CONTACT: Jane E. Hardisty, 317–290–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that after enactment of the law, revisions made to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a

determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: December 11, 2000.

Jane E. Hardisty,

State Conservationist, Indianapolis, Indiana.

[FR Doc. 00–32971 Filed 12–26–00; 8:45 am]

BILLING CODE 3410–16–U

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service (NRCS), Agriculture.

ACTION: Notice of availability of proposed changes in section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to issue a revised conservation practice standard in section IV of the FOTG. The revised standard is Closure of Waste Impoundments (360). This practice may be used in conservation systems that treat highly erodible land and/or wetlands.

DATES: Comments will be received until on or before January 26, 2001.

ADDRESSES: Address all requests and comments to Jane E. Hardisty, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of this standard will be made available upon written request. You may submit your electronic requests and comments to darrell.brown@in.usda.gov.

FOR FURTHER INFORMATION CONTACT: Jane E. Hardisty, 317–290–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that after enactment of the law, revisions made to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: December 11, 2000.

Jane E. Hardisty,

State Conservationist, Indianapolis, Indiana.

[FR Doc. 00–32973 Filed 12–26–00; 8:45 am]

BILLING CODE 3410–16–U

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service (NRCS), Agriculture.

ACTION: Notice of availability of proposed changes in section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to issue a revised conservation practice standard in Section IV of the FOTG. The revised standard is Waste Storage Facility (313). This practice may be used in conservation systems that treat highly erodible land and/or wetlands.

DATES: Comments will be received until on or before January 26, 2001.

ADDRESSES: Address all requests and comments to Jane E. Hardisty, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of this standard will be made available upon written request. You may submit your electronic requests and comments to darrell.brown@in.usda.gov.

FOR FURTHER INFORMATION CONTACT: Jane E. Hardisty, 317–290–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that after enactment of the law, revisions made to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: December 11, 2000.

Jane E. Hardisty,

State Conservationist, Indianapolis, Indiana.

[FR Doc. 00–32972 Filed 12–26–00; 8:45 am]

BILLING CODE 3410–16–U

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service (NRCS), Agriculture.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to issue a revised conservation practice standard in section IV of the FOTG. The revised standard is Waste Treatment Lagoon (359). This practice may be used in conservation systems that treat highly erodible land and/or wetlands.

DATES: Comments will be received until January 26, 2001.

ADDRESSES: Address all requests and comments to Jane E. Hardisty, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of this standard will be made available upon written request. You may submit your electronic requests and comments to darrell.brown@in.usda.gov.

FOR FURTHER INFORMATION CONTACT: Jane E. Hardisty, 317–290–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that after enactment of the law, revisions made to NRCS state technical guides used to carry out highly erodible land and wetland 2 provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: December 11, 2000.

Jane E. Hardisty,

State Conservationist, Indianapolis, Indiana.

[FR Doc. 00–32974 Filed 12–26–00; 8:45 am]

BILLING CODE 3410–16–U

DEPARTMENT OF COMMERCE

[I.D. 122000A]

Submission For OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Shoreside Processor Electronic Logbook Reports for the Alaska Bering Sea/Aleutian Islands Pollock and Pacific Cod Fisheries

Form Number(s): None

OMB Approval Number: None

Type of Request: Emergency

Burden Hours: 887

Number of Respondents: 19

Average Hours Per Response: 35 minutes

Needs and Uses: The American Fisheries Act (AFA) imposed major structural changes on the Bering Sea and Aleutian Islands Management Area (BSAI) pollock fishery, which is managed by National Marine Fisheries Service (NMFS), Alaska Region. These changes include addition of new recordkeeping and reporting requirements for participation in the BSAI pollock fishery for processors that receive groundfish from AFA catcher vessels and for BSAI pollock fishery cooperatives formed under the AFA. On November 30, 2000, NMFS released the Biological Opinion assessing the groundfish fisheries of the BSAI and GOA and effects on Steller sea lions as required by the Endangered Species Act (ESA). As a result, changes are required to recordkeeping and reporting procedures in order to facilitate management of fisheries by National Marine Fishery Service (NMFS). Existing requirements for electronic reporting by shoreside processors will be extended to processors that receive Pacific cod harvested in the Pacific cod directed fishery and to processors receiving pollock from the pollock directed fishery.

Affected Public: Business and other for-profit

Frequency: On occasion

Respondent's Obligation: Mandatory

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, DOC Forms Clearance Officer, (202) 482-3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 10 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: December 19, 2000.

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–33001 Filed 12–26–00; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[97–BXA–01]

In the Matter of: Modern Engineering Services, LTD., P.O. Box 1727, Islamabad, Pakistan, also known as Engineering and Technical Services, P.O. Box 2639, Islamabad, Pakistan, Respondent; Decision and Order

On April 1, 1997, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter "BXA"), issued a charging letter initiating this administrative proceeding against Modern Engineering Services, Ltd., also known as, Engineering and Technical Services (MES). The charging letter alleged that MES committed two violations of the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2000)) (the Regulations) [1], issued under the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (1991 & Supp. 2000) and Pub. L. No. 106–508) (the Act).[2] Specifically, the charging letter alleges that on or about April 1, 1992, and November 27, 1992, U.S. exporters, based upon information provided to them by MES, represented on export license applications, export control documents as defined in section 770.2 of the former Regulations, that MES was located at House No. 22621 I–10/2, Islamabad, Pakistan, and No. 1 Street #17, f–8–3 Rawalpindi, Islamabad, Pakistan, respectively, when in fact MES was not located at either of those addresses. BXA alleges that by making false and misleading misrepresentations, statements, or certifications of material fact, directly or indirectly, to BXA, in connection with the preparation, submission, issuance, use or maintenance of an export control document, MES committed two violations of section 787.5(a)(1) of the former Regulations.

Section 766.3(b)(1) of the Regulations provides that notice of issuance of a charging letter shall be served on a respondent "[b]y mailing a copy by registered or certified mail addressed to the respondent at respondent's last known address." BXA has established that notice of issuance of the charging letter was served on MES in accordance with section 766.3(b)(1) of the Regulations. BXA presented evidence that on April 1, 1997, BXA sent the charging letter by registered mail to MES at MES's last known address.

As to the date of service, BXA alleges that June 30, 1997 should be the date of delivery as that is the date MES constructively refused service of process. BXA's position is based upon section 766.3(c) of the Regulations, which provides that "[t]he date of service of notice of the issuance of a charging letter instituting an administrative enforcement proceeding . . . is the date of its delivery, or of its attempted delivery if delivery is refused." I find that June 30, 1997 shall be the date of attempted delivery. As stated above, BXA sent the charging letter to MES's last known addresses by registered mail. BXA also presented evidence that it made diligent and good faith efforts to locate MES, including visiting MES's last known address in Pakistan and trying to send the charging letter by facsimile to MES's last known fax number, as BXA did not receive a return receipt for the charging letter. Further, BXA has stated that the United States Postal Service informed BXA that it takes a maximum of 90 days for a letter sent by registered mail from the United States to reach Pakistan. Hence, as the charging letter was sent on April 1, 1997, it is appropriate to find that the charging letter reached Pakistan no later than June 30, 1997.

Section 766.6(a) of the Regulation provides, in pertinent part, that "[t]he respondent must answer the charging letter within 30 days after being served

[1] The alleged violations occurred in 1992. The Regulations governing the violations at issue are found in the 1992 version of the Code of Federal Regulations (15 CFR Parts 768–799 (1992)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to the matters set forth herein.

[2] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), which has been extended by successive Presidential Notices, the most recent being that of August 3, 2000 (65 Fed. Reg. 48347, August 8, 2000)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991 & Supp. 2000)). The Act was reauthorized on November 13, 2000. See Pub. L. No. 106–508, November 13, 2000.

with notice of issuance of the charging letter * * *" Hence, as service was effected on June 30, 1997, MES's answer to the charging letter was due no later than August 1, 1997. MES did not file an answer to the charging letter. MES is therefore in default. Thus, pursuant to section 766.7 of the Regulations, BXA moved the Administrative Law Judge (hereinafter the "ALJ") to find the facts to be as alleged in the charging letter and render a Recommended Decision and Order.

Following BXA's motion, the ALJ issued a Recommended Decision and Order in which he found the facts to be as alleged in the charging letter, and concluded that those facts constitute two violations of section 787.5(a)(1) of the former Regulations by MES, as BXA alleged. The ALJ also agreed with BXA's recommendation that the appropriate penalty to be imposed for the violations is a denial of MES's export privileges for ten years.

As provided by section 766.22 of the Regulations, the Recommended Decision and Order has been referred to me for final action. Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the Recommended Decision and Order of the ALJ.

Accordingly, It Is Therefore Ordered, First, that, for a period of ten years from the date of this Order, Modern Engineering Services, House No. 2262 I–10/2, Islamabad, Pakistan, also known as Engineering and Technical Services, No. 1 Street #17, f–8–3 Rawalpindi, Islamabad, Pakistan, and all of its successors or assigns, officers, representatives, agents, and employees, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order shall be served on MES and on BXA, and shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Dated: December 14, 2000.

William A. Reinsch,

Under Secretary for Export Administration.

[FR Doc. 00–32908 Filed 12–26–00; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–565–801]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings From the Philippines

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

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: December 27, 2000.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James at (202) 482–2924 and (202) 482–0649, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1999).

Final Determination

We determine that stainless steel butt-weld pipe fittings from the Philippines are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margin of sales are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

The Department published the preliminary determination of sales at less-than-fair-value on August 2, 2000. *See Notice of Preliminary Determination of Sales at Less Than Fair Value:*

Stainless Steel Butt-Weld Pipe Fittings from the Philippines, 65 FR 47393 (August 2, 2000) (Preliminary Determination). Since then the following events have occurred:

The Department conducted verifications of the cost responses of Tung Fong Industrial Co., Ltd. (Tung Fong) from September 25 through September 29, 2000 and the sales responses of Tung Fong from October 2 to October 6, 2000. *See* the "Verification" section (below).

The Department performed a post-preliminary analysis for Tung Fong. It put this analysis on the record of this investigation on November 2, 2000.

The petitioners, Tung Fong, and Enlin Steel Corporation (Enlin) filed case briefs on November 15, 2000. The petitioners and Enlin filed rebuttal briefs on November 22, 2000. Tung Fong filed its rebuttal brief on November 24, 2000.

Critical Circumstances

According to section 733(e) of the Tariff Act, the Department must examine whether there is a reasonable basis to believe or suspect that (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports during the "relatively short period" of over 15 percent may be considered "massive." Section 351.206(i) of the Department's regulations defines "relatively short period" normally as the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later.

As in the preliminary determination, we continue to find critical circumstances for respondent Enlin. (Enlin did not comment on this determination in its case brief.) *See* the Preliminary Determination at 47396 for an explanation of the basis for the Department's determination.

With respect to Tung Fong, we impute knowledge of dumping with regard to exports by this company based on Tung Fong's final dumping margin being greater than 25 percent. *See Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China: Preliminary Determination of Sales at Less-Than-Fair-Value*, 62 FR 31972, 31978 (June 11, 1997). We also find that there was a massive increase in imports over a relatively short period of time. *See* Tung Fong's export volumes provided in its August 8, 2000 submission, p. E447. Based on this information we make an affirmative final determination of critical circumstances with regard to Tung Fong.

With respect to companies in the "all others" category, it is the Department's normal practice to base its determination on the experience of investigated companies. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate From Japan*, 64 FR 73215, 73218 (December 29, 1999), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey*, 62 FR 9737, 9741 (March 4, 1997). However, for companies in the "all others" category, we do not use adverse facts available. Accordingly, we cannot utilize the dumping margins of Tung Fong or Enlin in making this determination because they were both based, at least partially, on adverse facts available. Therefore, since we have no other basis on which to impute knowledge of dumping, we make a negative final determination with respect to "all others." *See also* the Preliminary Determination at 47396.

Period of Investigation

The period of investigation is October 1, 1998 through September 30, 1999.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Joseph Spetrini, Deputy Assistant Secretary, Import Administration, to Troy Cribb, Assistant Secretary for Import Administration, dated the same date as publication of this notice, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B–099 of the Department of Commerce building. In addition, a complete version of the Decision Memo can be accessed directly on the internet at *http://ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Scope of Investigation

For purposes of this investigation, the product covered is certain stainless steel butt-weld pipe fittings. Certain stainless steel butt-weld pipe fittings are under 14 inches in outside diameter (based on nominal pipe size), whether finished or unfinished. The product encompasses all grades of stainless steel and "commodity" and "specialty" fittings. Specifically excluded from the definition are threaded, grooved, and bolted fittings, and fittings made from any material other than stainless steel.

The fittings subject to these investigations are generally designated under specification ASTM A403/A403M, the standard specification for Wrought Austenitic Stainless Steel Piping Fittings, or its foreign equivalents (*e.g.*, DIN or JIS specifications). This specification covers two general classes of fittings, WP and CR, of wrought austenitic stainless steel fittings of seamless and welded construction covered by the latest revision of ANSI B16.9, ANSI B16.11, and ANSI B16.28. Pipe fittings manufactured to specification ASTM A774, or its foreign equivalents, are also covered by these investigations.

These investigations do not apply to cast fittings. Cast austenitic stainless steel pipe fittings are covered by specifications A351/A351M, A743/743M, and A744/A744M.

The stainless steel butt-weld pipe fittings subject to these investigations are currently classifiable under subheading 7307.23.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Currency Conversion

We made currency conversions into United States dollars in accordance with section 77A(a) of the Tariff Act based on exchange rates in effect on the dates of the United States sales, as provided by the Dow Jones Business Information Services.

Verification

As provided in section 782(i) of the Tariff Act, we verified the information submitted by the respondent for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the respondent.

Fair Value Comparisons

To determine whether sales of stainless steel butt-weld pipe fittings from the Philippines were made in the United States at less than fair value, we compared U.S. export price sales to the normal value (NV). Our calculations followed the methods described in the preliminary determination, except as noted below and in the final determination calculation memorandum, dated the same date as the date of this notice, which has been placed in the file in Room B–099 of the Department of Commerce.

1. EP

For the price to the United States, we used EP as defined in section 772 of the Tariff Act. We calculated EP using the same method as in the preliminary determination, with the following exception:

1. We made corrections to Tung Fong's data for individual sales for bank charges and imputed credit benefit based on findings at the sales verification. For specifics, see the final determination analysis memorandum from Fred Baker to the file (analysis memorandum) dated the same date as the date of publication of this notice.

2. NV

We used the same method to calculate NV as that described in the preliminary determination, with the following exceptions:

1. We included all third-country sales in the calculation regardless of whether they were above or below the cost of production;

2. We compared U.S. sales only to third-country sales with identical product characteristics;

3. For all U.S. sales without an identical match in the third-country market, we assigned an NV comparison equivalent to the highest margin for any U.S. sale that had an identical match in the third-country market;

4. We made corrections to Tung Fong's data for individual sales for sales dates and international freight based on findings at the sales verification. *See* the analysis memorandum for specifics.

Use of Facts Available

For a discussion of our application of facts available, see the "Facts Available" section of the Decision Memo, which is on file in B–099 and available on the internet at *ia.ita.doc.gov*.

All Others

Pursuant to section 735(5)(A) of the Tariff Act, the estimated "all-others" rate is equal to the estimated weighted-average dumping margin established for Tung Fong.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Tariff Act, we are directing the Customs Service to continue to suspend the liquidation of all entries of stainless steel butt-weld pipe fittings from the Philippines manufactured by Enlin that are entered, or withdrawn from warehouse, for consumption on or after May 4, 2000, the date ninety days prior to the August 2, 2000 publication of the Preliminary Determination in the **Federal Register**. We will also instruct the Customs Service to suspend liquidation of all entries of stainless steel butt-weld pipe fittings manufactured by Tung Fong that are entered, or withdrawn from warehouse, for consumption on or after May 4, 2000. We will instruct the Customs Service to suspend liquidation for all other exporters of stainless steel butt-weld pipe fittings that are entered, or withdrawn from warehouse, beginning August 2, 2000. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the weighted average dumping margin, as indicated in the chart below. These cash deposit instructions will remain in effect until further notice.

Manufacturer/exporter	Margin (percent)
Enlin Steel Corporation	33.81
Tung Fong Industrial Co., Ltd.	33.81
All Others	33.81

ITC Notification

In accordance with section 735(d) of the Tariff Act, we have notified the International Trade Commission (ITC) of the determination. As the final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing the Customs Service to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published pursuant to section 735(d) and 777(i)(1) of the Tariff Act.

Dated: Decemberr 15, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

Appendix

Comments and Responses

A. Initiation of Sale-Below-Cost Investigation
B. Use of Adverse Facts Available
C. Appropriate Treatment of Miscellaneous Cost Items
D. Model Match Method
E. Critical Circumstances
F. Rescinding the Investigation

[FR Doc. 00–32978 Filed 12–26–00; 8:45 am]
BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–809]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings From Malaysia

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

ACTION: Notice of the final determination in the less than fair value investigation of stainless steel butt-weld pipe fittings from Malaysia.

SUMMARY: On August 2, 2000, the Department of Commerce ("Department") published the preliminary determination in the less than fair value ("LTFV") investigation of stainless steel butt-weld pipe fittings from Malaysia. See Notice of Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination: Stainless Steel Butt-Weld Pipe Fittings from Malaysia, 65 FR 47398 (August 2, 2000) ("Preliminary Determination"). This investigation covers one manufacturer/exporter of the subject merchandise. The period of investigation ("POI") is October 1, 1998 through September 30, 1999.

Based upon our verification of the data and analysis of the comments received, we have made changes to our determination. Therefore, the final

determination differs from the preliminary determination of this investigation. The final weighted-average dumping margin is listed below in the section titled "Final Determination of the Investigation."

EFFECTIVE DATE: December 27, 2000.

FOR FURTHER INFORMATION CONTACT: Juanita H. Chen or Rick Johnson, Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone 202–482–0409 (Chen) or 202–482–3818 (Johnson), fax 202–482–1388.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 ("Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (1999).

Period of Investigation

The period of investigation ("POI") is October 1, 1998 through September 30, 1999.

Background

On January 18, 2000, the Department initiated an antidumping duty investigation on stainless steel butt-weld pipe fittings from Malaysia. See Initiation of Antidumping Duty Investigations: Stainless Steel Butt-Weld Pipe Fittings From Germany, Italy, Malaysia and the Philippines, 65 FR 4595 (January 31, 2000). On August 2, 2000, the Department published a notice of its preliminary determination in the investigation. See Preliminary Determination, 65 FR 47398. On September 25, 2000 through September 29, 2000, the Department conducted the sales verification for Kanzen Tetsu Sdn. Bhd. ("Kanzen"). See Sales Verification Report (October 11, 2000). On October 2, 2000 through October 6, 2000, the Department conducted the cost verification for Kanzen. See Verification Report on the Cost of Production and Constructed Value Data (October 31, 2000). We invited parties to comment on our Preliminary Determination. Petitioners submitted their case brief ("Petitioners" Brief") on November 13, 2000. Kanzen did not submit a case brief. Kanzen submitted its rebuttal brief ("Kanzen Rebuttal") on November 20, 2000. Pursuant to a September 1, 2000 request by petitioners, the Department held a public hearing on the issues on November 22, 2000. The Department has conducted and completed the investigation in accordance with section 735 of the Act.

Scope of the Investigation

For purposes of this investigation, the product covered is certain stainless steel butt-weld pipe fittings ("pipe fittings"). Certain pipe fittings are under 14 inches in outside diameter (based on nominal pipe size), whether finished or unfinished. The product encompasses all grades of stainless steel and "commodity" and "specialty" fittings. Specifically excluded from the definition are threaded, grooved, and bolted fittings, and fittings made from any material other than stainless steel.

The pipe fittings subject to this investigation are generally designated under specification ASTM A403/A403M, the standard specification for Wrought Austenitic Stainless Steel Piping Fittings, or its foreign equivalents (*e.g.*, DIN or JIS specifications). This specification covers two general classes of fittings, WP and CR, of wrought austenitic stainless steel fittings of seamless and welded construction covered by the latest revision of ANSI B16.9, ANSI B16.11, and ANSI B16.28. Pipe fittings manufactured to specification ASTM A774, or its foreign equivalents, are also covered by this investigation.

This investigation does not apply to cast fittings. Cast austenitic stainless steel pipe fittings are covered by specifications A351/A351M, A743/743M, and A744/A744M.

The pipe fittings subject to this investigation are currently classifiable under subheading 7307.23.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this investigation is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs to this investigation are addressed in the December 15, 2000 Issues and Decision Memorandum ("Decision Memo") from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Troy H. Cribb, Assistant Secretary for Import Administration, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, and other issues addressed, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in the Decision Memo, a public memorandum which is on file at the U.S. Department of Commerce, in the Central Records Unit, in room B–099. In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Use of Facts Available

In accordance with section 776 of the Act, we have determined that the use of facts available is appropriate for certain portions of our analysis of Kanzen. For a discussion of our determination with respect to this matter, see the Decision Memo.

Fair Value Comparisons

To determine whether sales of pipe fittings from Malaysia to the United States were made at LTFV, we compared the export price ("EP") to the normal value ("NV"), as described in the "Export Price" and "Normal Value" sections of our Preliminary Determination, except as noted below, and as set forth in the Decision Memo, and the Analysis Memorandum for Kanzen Tetsu Sdn. Bhd.: Final Determination in the Less Than Fair Value Investigation of Stainless Steel Butt-Weld Pipe Fittings from Malaysia (December 15, 2000) ("Final Analysis Memo").

Export Price

We are calculating and applying an average unit bank charge per ton on U.S. sales, applying facts available from Kanzen's U.S. sales to calculate marine insurance expense on certain sales, correcting the marine insurance denomination in our margin analysis program, applying facts available on Kanzen's returns during the POI, allocating a percentage of miscellaneous unreported bank charges to Kanzen's U.S. sales, applying partial adverse facts available to Kanzen's unreported U.S. sale, and including the quantity for the unshipped sale reported by Kanzen, applying facts available for certain variables. See Decision Memo and Final Analysis Memo.

Normal Value

We are applying invoice date as the date of sale for U.K. sales, rather than contract date as in the Preliminary Determination. We are disallowing direct selling expenses on Kanzen's U.K. sales, adjusting domestic inland freight on certain invoices, correcting the reported payment date for certain sales observations, and allocating a

percentage of miscellaneous unreported bank charges to Kanzen's U.K. sales. See Decision Memo and Final Analysis Memo.

Cost of Production

We have revised the calculations for the variance ratios, scrap, adjustment for differences in merchandise, and the general and administrative expense factors. See Decision Memo and Final Analysis Memo.

Sales Below Cost in the Comparison Market

The Department disregarded comparison market below-cost sales that failed the cost test in the final results of the investigation.

Changes Since the Preliminary Determination

Based on our verification and analysis of the comments received, including ministerial error comments, we have made certain changes in the model match and margin calculation programs, as discussed in the Decision Memo, the Final Analysis Memo, and the Ministerial Error Memorandum for the Preliminary Determination of Sales at Not Less Than Fair Value (August 17, 2000) ("Ministerial Error Memo").

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Customs Service ("Customs") to suspend liquidation of all entries of subject merchandise from Malaysia that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this Final Determination in the **Federal Register**, as provided by section 735(c)(1)(C) of the Act. We will instruct Customs to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

STAINLESS STEEL BUTT-WELD PIPE FITTINGS

Producer/manufacturer/exporter	Weighted-average margin (percent)
Kanzen	7.51
All others	7.51

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our final determination. As our final determination is affirmative, the ITC will, within 75 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs to assess antidumping duties on all imports of the subject merchandise entered or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: December 15, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

Appendix—Issues in the Decision Memo

General Issues:

- Ministerial Errors From the Preliminary Determination

General Sales Issues:

- Date of Sale/Market Viability
- Bank Charges

U.K. Sales Issues:

- Domestic Inland Freight
- Credit Period
- FOB v. CIF
- Early Payment Discount

U.S. Sales Issues:

- Marine Insurance Expense
- Marine Insurance Expense Discount and Denomination
- Returns
- Miscellaneous Bank Charges
- Unreported U.S. Sales
- Unshipped Sale
- Inland Freight

Cost Issues:

- Total Adverse Facts Available
- Allocation of Cost Variances
- Standard Cost Reduction Factor for Pipes Used for Fittings
- Cost of Fittings Made of Finished Pipes
- G&A Expense Ratio

[FR Doc. 00–32979 Filed 12–26–00; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results in the antidumping duty administrative review of certain stainless steel butt-weld pipe fittings from Taiwan and intent not to revoke in part.

SUMMARY: On July 6, 2000, the Department of Commerce ("Department") published the preliminary results of the administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan. This review covers one manufacturer/exporter of the subject merchandise. The period of review ("POR") is June 1, 1998 through May 31, 1999.

We gave interested parties an opportunity to comment on the preliminary results. Based upon our verification of the data and analysis of the comments received, we have made changes in the margin calculation. Therefore, the final results differ from the preliminary results of this review. The final weighted-average dumping margin is listed below in the section titled "Final Results of the Review."

EFFECTIVE DATE: December 27, 2000.

FOR FURTHER INFORMATION CONTACT: Jim Doyle or Alex Villanueva, Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone 202–482–0159 (Doyle) or 202–482–6412 (Villanueva), fax 202–482–1388.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 ("Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (1999).

Background

On June 16, 1993, the Department published the antidumping duty order

on certain stainless steel butt-weld pipe fittings from Taiwan. See Certain Welded Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Final Determination and Antidumping Order, 58 FR 33250 (June 16, 1993). On June 9, 1999, the Department published a notice of opportunity to request administrative review of this order for the period June 1, 1998 through May 31, 1999. See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 64 FR 30962 (June 9, 1999). Both Ta Chen Stainless Steel Pipe Co., Ltd. ("Ta Chen"), a Taiwan producer and exporter of subject merchandise, and Petitioners, Markovitz Enterprises, Inc. (Flowline Division), Alloy Piping Products, Inc., Gerlin, Inc., and Taylor Forge, (collectively "Petitioners"), timely requested that the Department conduct an administrative review of Ta Chen's sales. On July 29, 1999, in accordance with section 751(a) of the Act, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review for the period June 1, 1998 through May 31, 1999. See Initiation of Antidumping and Countervailing Duty Administrative Review and requests for revocation in part, 64 FR 41075 (July 29, 1999). On July 6, 2000, the Department published the preliminary results of the administrative review in the **Federal Register**. See Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Intent to Not Revoke in Part, 65 FR 41629 (July 6, 2000) ("Preliminary Results"). On September 11, 2000 through September 15, 2000, the Department conducted verification of Ta Chen's home market data at Ta Chen's headquarters in Tainan, Taiwan. On September 16, 2000 through September 17, 2000, the Department conducted verification of Ta Chen's U.S. sales data at the Long Beach, California office of Ta Chen's U.S. affiliate, Ta Chen International Corp. ("TCI"). We gave interested parties an opportunity to comment on our Preliminary Results. Ta Chen and Petitioners filed briefs on October 16, 2000. On October 18, 2000, Ta Chen and Petitioners filed rebuttal briefs. No hearing was requested or held. The date for issuing the final results of the review was November 3, 2000. In order to provide parties an opportunity to comment on the issue of reimbursement, which arose late in the proceeding, the Department extended the time limit for the final results by 42 days in accordance with section 751 (a)(3) of the Act. See November 3, 2000 memorandum from Edward Yang to Joseph Spetrini: Extension of Time Limit for the Administrative Review of Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan. Accordingly, on November 9, 2000, the Department published a notice of postponement of the final results of antidumping duty administrative review in the **Federal Register**. See Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Notice of Postponement of Final Results of Antidumping Duty Adminstrative Review, 65 FR 67348 (November 9, 2000). The date for issuing the final results was moved from November 3, 2000 to December 15, 2000. Interested parties were provided an opportunity to comment on the issue of reimbursement. On November 20, 2000 and again on November 30, 2000 the Department received comments from counsel for respondents and petitioners. The Department has conducted and completed the administrative review in accordance with section 751 of the Act.

Scope of the Review

The merchandise subject to this administrative review is certain stainless steel butt-weld pipe fittings ("SSBWPF") whether finished or unfinished, under 14 inches inside diameter. Certain SSBWPF are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise is used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; and (5) high pressures are contained within the system.

Pipe fittings come in a variety of shapes, with the following five shapes the most basic: "elbows", "tees", "reducers", "stub-ends", and "caps." The edges of finished pipe fittings are beveled. Threaded, grooved, and bolted fittings are excluded from this review. The pipe fittings subject to this review are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the review is dispositive. Pipe fittings manufactured to American Society of Testing and Materials specification A774 are included in the scope of this order.

Analysis of Comments Received

All issues raised in the case briefs, as well as the Department's findings, in this administrative review are addressed in the Issues and Decision Memorandum for the Administrative Review of Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: June 1, 1998, through May 31, 1999 ("Decision Memorandum"), from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Troy H. Cribb, Assistant Secretary for Import Administration (December 15, 2000), which is hereby adopted by this notice. A list of the issues raised and to which we have responded, all of which are in the Decision Memorandum, and a list of our changes, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file at the U.S. Department of Commerce, in the Central Records Unit, in room B–099. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://www.ita.doc.gov/import_admin/records/frn*. The paper copy and electronic version of the public version of the Decision Memorandum are identical in content.

Sales Below Cost in the Home Market

As discussed in more detail in the Preliminary Results, the Department disregarded home market below-cost sales that failed the cost test in the final results of review.

Level of Trade

As discussed in more detail in the Preliminary Results, the Department determined that all sales in the home market and the U.S. market were made at the same level of trade. Therefore, we have not made a level of trade adjustment because all price comparisons are at the same level of trade and an adjustment pursuant to section 773(a)(7)(A) of the Act is not appropriate.

Request for Revocation

Under section 351.222(b) of the Department's regulations, the Department may partially revoke an order with respect to a company if that producer or exporter has sold the merchandise at not less than normal value for a period of at least three consecutive years and it is not likely that the producer or exporter will sell subject merchandise at less than normal value in the future. On June 30, 1999, Ta Chen submitted a request, in accordance with 19 CFR 351.222(e), that

the Department revoke the antidumping duty order on SSBWPF from Taiwan with respect to Ta Chen. In accordance with 19 CFR 351.222(e)(1), Ta Chen stated that it sold the subject merchandise at not less than normal value for a period of at least three years, including the current period under administrative review, and that it sold the subject merchandise in commercially significant quantities to the United States during each of these three years. Ta Chen also stated that it would not sell the subject merchandise at less than normal value to the United States in the future and agreed to reinstatement of the order against Ta Chen, as long as any exporter or producer is subject to the order, if the Department concludes that Ta Chen sold the subject merchandise at less than normal value, subsequent to the revocation.

On May 26, 2000, the Department requested that Ta Chen provide volume and value data on its exports and sales of subject merchandise for the past three consecutive years. Ta Chen provided data in a June 5, 2000 submission.

The three review periods on which Ta Chen is basing its request for revocation consist of: (1) The period for 6/1/96 through 5/31/97, for which the Department found a *de minimis* margin of 0.34 percent; (2) the period for 6/1/97 through 5/31/98, for which no administrative review was conducted; and (3) the period for 6/1/98 through 5/31/99, for which the Department is currently conducting an administrative review.

The Department considered Ta Chen's request for revocation and reviewed the relevant information. Because we did not find a *de minimis* margin for the final results, we conclude that the criteria for revocation have not been satisfied, and we are not revoking the order with regard to Ta Chen.

Changes Since the Preliminary Results

Based on our verification and analysis of the comments received, we have made certain changes in the margin calculation, as discussed in the Decision Memorandum, accessible in B–099. The public version of this Decision Memorandum is also available on the Web at *http://www.ita.doc.gov/import_admin/records/frn.* In addition, we have corrected certain clerical errors in the margin calculation: (1) The incorrect formatting of the U.S. sales' date of entry (computer variable ENTRYDTU); and (2) an incorrect definition of constructed export price sales in the model match program as being sales within the window period (instead of within the POR).

Reimbursement

As a result of the Sales and Cost Verification of Ta Chen and TCI on September 11, 2000 through September 19, 2000 and the submissions leading to verification, the Department has applied 19 CFR 351.402(f)(1)(i)(B), which states that "in calculating the export price (or constructed export price), the Secretary will deduct the amount of any antidumping duty or countervailing duty, which the exporter or producer * * * reimbursed to the importer." See Decision Memorandum at "Changes since the Preliminary Results." Therefore, based on our findings of reimbursement of antidumping duties by Ta Chen to TCI in this administrative review, we have determined that the dumping margin should be doubled.

Final Results of the Review

We determine that the following percentage weighted-average margin exists for the period June 1, 1998 through May 31, 1999 (this margin has been doubled to reflect the Department's reimbursement determination):

CERTAIN WELDED STAINLESS STEEL PIPE

Producer/Manufacturer/Exporter	Weighted-average margin (percent)
Ta Chen	12.84

The Department shall determine, and the U.S. Customs Service ("Customs") shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. With respect to the constructed export price sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess any resulting *non-de minimis* percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries during the review period.

The Department's decision applies to all entries of subject merchandise produced and exported by Ta Chen, entered, or withdrawn from warehouse, for consumption on or after June 1, 1998 and before May 31, 1999. The Department will order the suspension of liquidation ended for all such entries and will instruct Customs to release any cash deposits or bonds.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of certain SSBWPF from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Ta Chen will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate will be the "all others" rate, which is 51.01 percent.

The cash deposit rate has been determined on the basis of the selling price to the first unaffiliated U.S. customer. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

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

Dated: December 15, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

Appendix

Changes Since The Preliminary Results

1. Reimbursement of Antidumping Duties
2. Treatment of U.S. Repacking Expense
3. Calculation of Constructed Export Price ("CEP") Adjustments
4. Minor Corrections to Database from Verification
   a. Foreign Inland Freight
   b. Manufacturer
   c. U.S. Warehousing Expense
   d. U.S. Bank Charges

[FR Doc. 00–32980 Filed 12–26–00; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–828]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings From Italy

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

EFFECTIVE DATE: December 27, 2000.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Nancy Decker at (202) 482–0405 and (202) 482–0196, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("the Department") regulations are to the regulations at 19 CFR Part 351 (2000).

Final Determination

We determine that stainless steel butt-weld pipe fittings ("pipe fittings") from Italy are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Act. The estimated margin of sales at LTFV is shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

The preliminary determination in this investigation was published on August 2, 2000. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings from Italy, 65 FR 47388 (August 2, 2000) ("Preliminary Determination"). The investigation covers one manufacturer/exporter, Coprosider S.p.A. ("Coprosider").

The Department verified Coprosider's responses to the antidumping questionnaire from September 11–15, 2000 (sales verification) and from September 18–22, 2000 (cost verification). We invited parties to comment on our Preliminary Determination. Based on our analysis of the comments received, we have made changes in the margin calculation. Therefore, the final determination differs from the preliminary determination.

Period of Investigation

The Period of Investigation ("POI") is October 1, 1998 through September 30, 1999.

Scope of Investigation

For purposes of this investigation, the product covered is certain stainless steel butt-weld pipe fittings. Pipe fittings are under 14 inches in outside diameter (based on nominal pipe size), whether finished or unfinished. The product encompasses all grades of stainless steel and "commodity" and "specialty" fittings. Specifically excluded from the definition are threaded, grooved, and bolted fittings, and fittings made from any material other than stainless steel.

The fittings subject to this investigation are generally designated under specification ASTM A403/A403M, the standard specification for Wrought Austenitic Stainless Steel Piping Fittings, or its foreign equivalents (*e.g.*, DIN or JIS specifications). This specification covers two general classes of fittings, WP and CR, of wrought austenitic stainless steel fittings of seamless and welded construction covered by the latest revision of ANSI B16.9, ANSI B16.11, and ANSI B16.28. Pipe fittings manufactured to specification ASTM A774, or its foreign equivalents, are also covered by this investigation.

This investigation does not apply to cast fittings. Cast austenitic stainless steel pipe fittings are covered by specifications A351/A351M, A743/743M, and A744/A744M.

The stainless steel butt-weld pipe fittings subject to this investigation are currently classifiable under subheading 7307.23.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the "Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Stainless Steel Butt-weld Pipe Fittings from Italy" ("Decision Memorandum") from Joseph A. Spetrini, Deputy Assistant Secretary, Enforcement Group III, to Troy H. Cribb, Assistant Secretary for Import Administration, dated December 15, 2000, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in the public memorandum which is on file in the Central Records Unit, Room B–099 of the main Department building. In addition, the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our corrections to Coprosider's reported cost of production, findings at verification and analysis of comments received, we have made certain changes in the margin calculations. We have also corrected certain programming and clerical errors in our preliminary determination. These changes are discussed in the relevant sections of the Decision Memorandum.

Final Critical Circumstances Determination

As set forth in our Decision Memorandum, because the importer knowledge of dumping criterion (*i.e.*, margins of 25 percent or more for export price sales) necessary to find critical circumstances continues to be met with respect to Coprosider, the Department affirms, for the purposes of this final determination, that critical circumstances exist for imports of pipe fittings from Coprosider.

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of entries of subject merchandise from Coprosider that are entered, or withdrawn from warehouse, for consumption on or after May 4, 2000, and to continue to suspend liquidatation of any imports from other companies of subject merchandise entered, or withdrawn from warehouse, for consumption on or after August 2, 2000. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice.

The margins in the final determination are as follows:

	Margin (Percent)
Exporter/Manufacturer:	
Coprosider	26.59
All Others	26.59

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 15, 2000.

Troy H. Cribb,

Assistant Secretary far Impart Administratian.

Appendix—Issues in Decision Memo

Comments and Respanses

1 Cost of Production
- A. Combining Costs of the Affiliated Suppliers/Major Input Rule
- B. Facts Available
- C. Selling, General and Administrative Expenses
- D. Financial Expenses

2 Level of Trade

3 Usual Commercial Quantities and Ordinary Course of Trade

4 Circumstance-of-Sale Adjustment-Imputed Credit Expenses

5 U.S. Movement Expenses

6 Indirect Selling Expenses (ISE)

7 Ministerial Error

8 Critical Circumstances

9 Miscellaneous Issues
- A. Model Match
- B. Sample Sales and Sales to Affiliated Party
- C. Correction of Errors Found At Verification
- D. Use of Updated Cost Data

[FR Doc. 00–32981 Filed 12–26–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Florida; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 00–033. *Applicant:* University of Florida, Gainesville, FL 32611. *Instrument:* Multi-Sensor Core Logger. *Manufacturer:* GEOTEK Ltd., United Kingdom. *Intended Use:* See notice at 65 FR 65296, November 1, 2000.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides extraction of sediment cores for measurements of P-wave velocity, density, magnetic susceptibility, core thickness and high resolution color images. Woods Hole Oceanographic Institution and a university oceanography department advise that (1) these capabilities are pertinent to the applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutary Import Pragrams Staff.

[FR Doc. 00–32984 Filed 12–26–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration Washington University School of Medicine; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 00–035. *Applicant:* Washington University School of Medicine, St. Louis, MO 63110. *Instrument:* Motorized Manipulator. *Manufacturer:* Luigs and Neumann, Germany. *Intended Use:* See notice at 65 FR 68981, November 15, 2000.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides a positional accuracy of 0.1 microns to place microelectrodes for patch clamp studies of synaptic transmission in neurons. The National Institutes of Health advises in its memorandum of October 30, 2000 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 00–32985 Filed 12–26–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120100A]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of availability and request for comment.

SUMMARY: Notice is hereby given that the Oregon Department of Fish and Wildlife (ODFW) has submitted a Fisheries Management and Evaluation Plan (FMEP) pursuant to the protective regulations promulgated for Upper Willamette River (UWR) spring chinook salmon under section 4(d) of the Endangered Species Act (ESA). The FMEP specifies the future management of inland recreational and commercial fisheries potentially affecting listed UWR spring chinook salmon. The Washington Department of Fish and Wildlife (WDFW) has submitted a Hatchery and Genetic Management Plan (HGMP) for Tucannon River summer steelhead pursuant to the same section 4(d) rule. The Tucannon HGMP describes an artificial propagation program designed to increase the abundance of the listed, indigenous steelhead stocks and to replace a composite, non-listed stock for fisheries enhancement and mitigation use. This document serves to notify the public of the availability of the FMEP and the HGMP for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments or requests for a public hearing on the draft FMEP or HGMP must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on January 26, 2001.

ADDRESSES: Written comments and requests for copies of the draft FMEP should be addressed to Lance Kruzic, Sustainable Fisheries Division, NWR2, 525 N.E. Oregon Street, Suite 510, Portland, OR 97232. Comments may also be sent via fax to 503-872-2737. Comments and requests for copies of the draft HGMP should be addressed to Herb Pollard, Sustainable Fisheries Division, Snake River Branch Office, 10215 W. Emerald. Boise, ID 83709, or faxed to 208-378-5699. The documents are also available on the internet at http://www.nwr.noaa.gov/. Comments will not be accepted if submitted via e-mail or the internet.

FOR FURTHER INFORMATION CONTACT: Lance Kruzic, Portland, OR at phone number: 503-231-2178, or e-mail: lance.kruzic@noaa.gov regarding the FMEP; or Herb Pollard, Boise, ID at phone number: 208-378-5614, or e-mail: herbert.pollard@noaa.gov regarding the HGMP.

SUPPLEMENTARY INFORMATION: The following evolutionarily significant units (ESUs) are covered in this notice: threatened Upper Willamette River Spring Chinook Salmon (*Oncorhynchus tshawytscha*), threatened Snake River Basin Steelhead (*O. mykiss*).

Background

Under section 4(d) of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. NMFS has issued a final ESA 4(d) Rule adopting regulations necessary and advisable to conserve the UWR spring chinook salmon and Snake River Basin steelhead (July 10, 2000; 65 FR 42422). This 4(d) rule applies the prohibitions enumerated in section 9(a)(1) of the ESA. NMFS did not find it necessary and advisable to apply the take prohibitions described in section 9(a)(1)(B) and 9(a)(1)(C) to fishery harvest activities and artificial propagation programs if managed in accordance with an FMEP or HGMP that has been approved by NMFS. As specified in the July 10, 2000, 4(d) rule, before a decision is made on an FMEP or HGMP, the public must have an opportunity to review and comment.

Draft FMEP Received

ODFW has submitted to NMFS an FMEP for inland recreational and commercial fisheries potentially affecting listed adult and juvenile UWR spring chinook salmon. This includes fisheries occurring in the Willamette River Basin and the mainstem Columbia River below the confluence of the Willamette River when spring chinook are migrating upstream. The objective of the FMEP is to harvest known, hatchery-origin spring chinook and other fish species in a manner that does not jeopardize the survival and recovery of the ESU. All fisheries included in the FMEP will be managed so that retention of spring chinook that are not externally marked (i.e., do not have a fin clipped) will be prohibited beginning in 2002. Only hatchery-origin spring chinook that are adipose fin clipped may be retained. Impact levels to listed spring chinook populations in the ESU due to catch and release are specified in the FMEP. Population viability analyses and risk assessments in the FMEP indicate the extinction risk for listed spring chinook under the proposed fishery impact levels to be less than 0.1 percent. A variety of monitoring and evaluation tasks are specified in the FMEP to assess the abundance of spring chinook, determine fishery effort and catch of spring chinook, and angler compliance. A comprehensive review of the FMEP to evaluate whether the fisheries and listed spring chinook populations are performing as expected will be done in 2004 and at 5 year intervals thereafter.

Draft HGMP Received

The HGMP submitted by WDFW describes an artificial propagation program that proposes to take 40 pairs of naturally produced steelhead adults as broodstock and produce 150,000 smolts of the native stock for release in the Tucannon River annually. The purposes of the program are: (1) to increase the abundance of the local, indigenous stock of steelhead; (2) to restore natural spawning escapements, and (3)to enhance fisheries opportunities if the program successfully restores spawning escapements and production.

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000) specifies categories of activities that contribute to the conservation of listed salmonids or are governed by a program that adequately limits impacts on listed salmonids. The criteria to be met by activities submitted under the salmon and steelhead ESA 4(d) rule are contained in that rule (65 FR 42422, July 10, 2000).

Approval of a FMEP or a HGMP shall be NMFS' written approval by NMFS' Northwest or Southwest Regional Administrator, as appropriate. Authority to take listed species is subject to the conditions set forth in the concurrence letter of the FMEP and HGMP which will specify the implementation and reporting requirements. Approval of FMEPs and HGMPs is granted in accordance with the salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000) and are subject to the ESA and NMFS regulations governing the take of listed species (50 CFR parts 222-226).

Those individuals requesting a hearing on the FMEP or HGMP listed in this notice should set out the specific reasons why a hearing on that FMEP or HGMP would be appropriate (see

ADDRESSES). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: December 20, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–33003 Filed 12–26–00; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 001027299–0299–01]

RIN 0648–ZA95

NOAA Climate and Global Change Program, Program Announcement

AGENCY: Office of Global Programs, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: With the intent of stimulating integrated multidisciplinary studies and enhancing institutional collaboration, National Oceanic Atmospheric Administration (NOAA), Environmental Protection Agency (EPA), National Aeronautics and Space Administration (NASA), the National Science Foundation (NSF), and the Electric Power Research Institute (EPRI), announce our interest in receiving research proposals to improve our understanding of the human health consequences related to climate variability and enhance the integration of useful climate information into public health policy and decision-making. This joint announcement is intended to support the formation of multidisciplinary teams working in close collaboration on integrated projects to illuminate pathways by which climate may affect human health, and which explore the potential for applying climate forecast information in the public health arena. Climate refers to climate variability across time scales. Understanding how short term climate variability affects human health may improve our knowledge of potential consequences of, and adaptation to, longer term changes in the climate system.

Relevance of This Joint Announcement

In 1995, the White House along with the National Academy of Sciences elevated the climate and health issue through their jointly sponsored Conference on Human Health and Global Climate Change. Since then, several multi-agency sponsored workshops such as the American Academy of Microbiology Colloquium on Climate Variability and Human Health: An Interdisciplinary Perspective, and the workshop on Climate Change and Vector-borne and other Infectious Disease: A Research Agenda, have begun to define research needs in this emerging discipline. The recently issues NRC Pathways report recognizes that climate may have important impacts on human health but that further study is necessary, and that such studies must also address issues of social vulnerability and adaptability. The NRC also is conducting a study on Climate, Ecology, Infectious Disease and Health.

Over the past several years as interest in this new field has grown, research and analysis have demonstrated a connection between climate and health in some cases. Yet it is well recognized that more research is required. This, coupled with an evolving capacity to understand and predict natural changes in the climate system, and a desire to provide climate forecast information for social benefit, particularly in the public health sector, has driven demand for improved understanding of the relationship between climate variability and human health.

Both the scientific research results and recommendations stemming from various meetings highlight the complexity of the research questions and the need for a coordinated multi-agency and interdisciplinary approach. The very nature of the research required cuts across disciplinary boundaries, and spans a range of agency missions and mandates and private sector interests. The NOAA Office of Global Programs is interested in the production and application of predictive climate information; EPA is concerned with the impacts of climate change and variability on human health; and NASA's interests include remote sensing observations, research, data, information and technologies for public health. Moreover, NSF focuses on broadly based fundamental research to improve understanding of the Earth system, and EPRI addresses key research gaps in climate change and human health. This announcement is offered as an experimental mechanism to fill critical gaps in climate variability and human health research and to coordinate funding of overlapping agency and institutional interests in such research. Other private sector organizations interested in jointly funding research through this announcement process should contact the NOAA Program Officer Juli Trtanj (301) 427–2089, ext. 134, or internet: trtanj@ogp.noaa.gov. Research projects will be funded for a one, two or three year period. Funding beyond the first year is contingent upon availability of funds.

Program Objectives

The overarching goal of this announcement is to develop and demonstrate the feasibility of new approaches or field studies that investigate or validate well-formed hypotheses or models of climate variability and health interactions. This announcement is offered as part of an interagency effort to build an integrated climate and health community. Proposed research submitted under this announcement is encouraged to build on existing research activities, programs, research sites and facilities, or data sets.

Requirements and General Guidance

Research teams should include, at a minimum, one investigator each from the public health or medical response, ecology, and climate communities working in close collaboration on an integrated project. Research proposals submitted under this announcement are strongly encouraged to include components addressing either the adaptation or vulnerability of human and public health systems to climate variability, or an economic analysis of using predictive climate information, or both. (See Criteria for Evaluation b). The funding partners will look favorably on research activities that involve end-users from the public health arena (*i.e.*, local public health officials, regional or international health organizations, other public health or disaster management agencies and institutions) and which address the means by which their research results can be used by public health policy and decision-makers. (See Criteria d). Investigators are encouraged to demonstrate that they will disseminate research results through formal presentation during at least one professional meeting and publication in a peer-reviewed journal. (See Criteria b).

Investigators should also plan to participate in an annual meeting of researchers funded under this announcement. This meeting will be organized by the funding partners and is intended to facilitate midpoint

discussions of research and methodology as well as presentations of final research results. The participation of other team members, particularly new researchers at the graduate and postdoctoral level, is highly encouraged. An interim progress report will be required.

DATES: Unless otherwise noted, strict deadlines by which NOAA OGP must receive proposals for submission to the FY 2001 process are: Pre-proposals must be received by OGP no later than January 31, 2001, and full proposals must be received no later than April 6, 2001.; Applicants who have not received a response to their pre-proposal within four weeks should contact the program office: Juli Trtanj (301) 427–2089, ext. 134 or internet: *trtanj@ogp.noaa.gov*. The time from target date to grant award varies. We anticipate that review of full proposals will occur in May or June 2001, for most approved projects. September 1, 2001, may be used as the earliest proposed start date on the proposal, unless otherwise directed by the appropriate Program Officer. Applicants should be notified of their status within six months of full proposal submission. All proposals must be submitted in accordance with the requirements listed below. Failure to heed the requirements may result in proposals being returned without review.

ADDRESSES: All submissions should be directed to: Office of Global Programs (OGP); National Oceanic and Atmospheric Administration; 1100 Wayne Avenue, Suite 1225; Silver Spring, MD 20910–5603.

FOR FURTHER INFORMATION CONTACT: Irma duPree at the above address or phone (301) 427–2089, ext. 107, fax: (301) 427–2072, Internet: duPree@ogp.noaa.gov.

SUPPLEMENTARY INFORMATION:

1. Funding Availability

NOAA, EPA, NASA, NSF and EPRI believe that the research on the relationship between climate variability and human health will benefit significantly from a strong partnership with outside investigators. Current plans assume that over 50% of the total resources provided through this announcement will support extramural efforts, particularly those involving the broad academic community. Funding may be provided by NOAA, EPA, NASA, NSF or EPRI.

This Program Announcement is for projects to be conducted up to a three-year period by investigators both inside and outside of NOAA, EPA, NASA, NSF and EPRI. The funding instrument for extramural awards will be a grant unless it is anticipated that any of the funding entities will be substantially involved in the implementation of the project, in which case the funding instrument should be a cooperative agreement. Examples of substantial involvement may include but are not limited to proposals for collaboration between a funding entity or funding entity scientist, and a recipient scientist or technician and/or contemplation by NOAA, EPA, NASA or NSF of detailing Federal personnel to work on proposed projects. NOAA, EPA, NASA and NSF will make decisions regarding the use of a cooperative agreement on a case-by-case basis. Matching share is not required by this program.

2. Eligibility

Participation in this competition is open to all institutions eligible to receive support for NOAA, EPA, NASA, NSF and EPRI. For awards to be issued by NOAA, eligible applicants are institutions of higher education, hospitals, other nonprofits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, state, local and Indian tribal governments and Federal agencies. Applications from non-Federal and Federal applicants will be competed against each other. Proposals selected for funding from non-Federal applicants will be funded through a project grant or cooperative agreement under the terms of this notice. Proposals selected for funding from NOAA employees shall be effected by an intragency fund transfer. Proposals selected for funding from a non-NOAA Federal Agency will be funded through an interagency transfer. Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 USC 1535) is not an appropriate legal basis.

3. Program Authority

NOAA Authority: U.S.C. 2931 *et seq.*; (CFDA No. 11.431)—CLIMATE AND ATMOSPHERIC RESEARCH.

EPA Authority: 42 U.S.C. 7403(a); 42 U.S.C. 7403(b); 42 U.S.C. 7403(g); 15 U.S.C. 2907(a); (CFDA No. 66.500)—OFFICE OF RESEARCH AND DEVELOPMENT.

NSF Authority: 42 U.S.C. 1861–75; (CFDA No. 47.050)—GEOSCIENCES.

NASA Authority: 15 U.S.C. 2932(a); 15 U.S.C. 2932(b); 15 U.S.C. 2932(e2); 15 U.S.C. 2936; (CFDA No. 43–999).

Guidelines for Submission

1. Pre-proposals

(a) Pre-proposals should be no longer than eight pages in length (no attachments please) and include the names and institutions of all investigators, a statement of the problem, description of data and methodology including names of data sets and types of models or analysis, a general budget for the project, a description of intended use of results for public health policy and decision making, and a one to two page biographical sketch for each investigator.

(b) The Program Officers will evaluate the pre-proposals.

(c) Submission of pre-proposals is not a requirement, but it is in the best interest of the applicants and their institutions.

(d) Facsimile and email submissions are acceptable for pre-proposals only.

(e) Projects deemed unsuitable during pre-proposal review will not be encouraged to submit full proposals.

(f) Investigators who are not encouraged to submit full proposals will not be precluded from submitting full proposals.

2. Criteria for Evaluation

Below are the criteria for evaluation which will be used for making award decisions. Pre-proposals will be evaluated on likely ability to meet these criteria.

(a) Scientific Merit-60% (to include: Methodology, proof of data quality and availability, experience of team and team members, and relevant peer-reviewed publications)

(b) Responsiveness to announcement-20%

(c) Explicit multidisciplinary participation and collaboration—10%

(d) Potential for use by climate, ecology and health community or public/environmental health community—10%

3. Selection Procedures and Review Process

The Program Officers will not be voting members of an independent peer panel. Each Program Officer will individually rank the proposals considering the recommendations and evaluations of the independent peer panel and the program policy factors listed below. The Federal Agency Program Officers will then make the funding selections taking into account these rankings, the panel review and evaluations, and program policy factors listed below. Proposals are usually awarded in the numerical order they are

ranked based on the independent peer mail review or the independent peer panel review. However, the Program Officers may consider the following program policy factors: (a) Whether proposals do not substantially duplicate other projects that are currently funded by NOAA, other Federal agencies or funding sources; (b) whether proposals do not substantially duplicate other proposals submitted in response to this announcement; (c) whether proposals funded maximize use of available funds; and (d) whether proposal cost fall within remaining funds available. As a result of this review, the Program Officers may decide to select an award out of order. The Program Officers will also determine the total duration and amount of funding for each selected proposal. Both agency and non-agency experts in the field may be used in this process.

Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding.

Federal agency employees are subject to statutes pertaining to non-disclosure and confidentiality requirements protecting proprietary information that may be contained in applications submitted for potential funding. Non-Federal evaluators have agreed in writing to similar non-disclosure and confidentiality provisions. Please note, however, that should EPRI or another participating private organization which jointly funds research under this notice select an application for funding, none of the participating Federal agencies is responsible for any unauthorized disclosure of information that may occur on any dispute that may arise.

4. Proposal Submission

The following forms are required in each application, with original signatures on each federal form. Failure to comply with these provisions will result in proposals being returned without review.

(a) Full Proposals: (1) Proposals submitted to the NOAA Climate and Global Change Program must include the original and two unbound copies of the proposal. (2) Investigators are required to submit 3 copies of the proposal; however, the normal review process requires 20 copies. Investigators are encouraged to submit sufficient proposal copies for the full review process if they wish all reviewers to receive color, unusually sized (not 8.5×11''), or otherwise unusual materials submitted as part of the proposal. Only three copies of the Federally required forms are needed. (3) Proposals must be limited to 40 pages (numbered), including statement of work, budget, investigators' vitae, and all appendices. Appended information may not be used to circumvent the page length limit. Federally mandated forms are not included within the page count. (4) Proposals should be sent to the NOAA Office of Global Programs at the above address. (5) Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

(b) Required Elements: All proposals must include the following elements:

(1.) Signed title page: The title page must be signed by the Principal Investigator (PI) and the instititional representative. If more than one investigator is listed on the title page, pleases identify the lead investigator. The PI and institutional representative should be identified by full name, title, organization, telephone number and address. The total amount of Federal funds being requested should be listed for each budget period.

(2.) Abstract: An abstract must be included and should contain an introduction of the problem, rationale and a brief summary of work to be completed. The abstract should appear on a separate page, headed with the proposal title, institution(s), investigator(s), total proposed cost and budget period.

(3.) Results from prior research; The results of related research activities should be described, including their relation to the currently proposed work. Reference to each prior research award should include the title, agency or institution, award number, PIs, period of award and total award. The section should be a brief summary and should not exceed two pages total.

(4) Statement of work: The proposed project must be completely described, including identification of the problem, scientific objectives, proposed methodology, and relevance to the announcement. Benefits of the proposed project to the general public and the scientific community should also be discussed. A summary of proposed work must be included clearly indicting that the proposed work is achievable. The statement of work, including references but excluding figures and other visual materials, must not exceed 15 pages of text. Investigators wishing to submit group proposals that exceed the 15-page limit should discuss this possibility with the appropriate Program Officer prior to submission. In general, proposals from 3 or more investigators may include a statement of work containing up to 15 pages of overall project description plus up to 5 additional pages for individual project descriptions.

(5.) Budget Justification: A brief description of the expenses listed on the budget and how they address the proposed work. Itemized justification must include salaries, equipment, publications, supplies, tuition, travel, etc.

(6.) Budget; The proposal must include total and annual budgets corresponding with the descriptions provided in the statement of work. Non-Federal Applicants must submit a Standard Form 424 (4–92) ''Application for Federal Assistance'', including a detailed budget using the Standard Form 424a (4–92), ''Budget Information—Non-Construction Programs''. The form is included in the standard NOAA application kit. Additional text to justify expenses should be included as necessary. Federal researchers should contact Irma duPree at (301) 427–2089 ext. 107, for guidance regarding the types of forms required for submission. Additionally, Federal researchers should provide, with their application, the appropriate statutory authority which allows their agency to receive funds from another Federal agency to complete the work outlined in their proposal.

(7.) Vitae: Abbreviated curriculum vitae are sought with each proposal. Reference lists should be limited to 10–15 of the most recent and relevant publications with up to five other relevant papers.

(8) Current and pending support: For each investigator, submit a list that includes project title, supporting agency with grant number. Investigator months, dollar value and duration. Requested values should be listed for pending support.

(9) List of suggested reviewers: The cover letter may include a list of individuals qualified and suggested to review the proposal. It also may include a list of individuals that applicants would prefer to not review the proposals. Such lists may be considered at the discretion of the Program Offices.

(c) Other requirements:

Applicants may obtain a Standard NOAA application kit from the Program homepage at http://www.ogp.noaa.gov/, or from Irma duPree at the Program Office (301) 427–2089 X107.

Primary applicant certification—All primary applicants must submit a completed Form CD–511, ''Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying'' Applicants are also hereby notified of the following:

1. Nonprocurement Debarment and Suspension—Prospective participants (as defined at 26 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

2. Drug Free workplace—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. Anti-Lobbying—Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions", and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(4) Anti-Lobbying disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL. "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

(d) Lower Tier Certifications:

(1.) Recipients must require applicants/bidders for subgrants, contracts, subcontracts, or lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form SF–LLL, "Disclosure of Lobbying Activities" Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

(2.) Recipients and subrecipients are subject to all applicable Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal Financial assistance awards.

(3.) Pre-award Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been received, there is no obligation to the applicant on the part of Department of Commerce to cover pre-award costs.

(4.) This program is subject to the requirements of OMB Circular No. A–110, "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations", and 15 CFR part 24, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments", as applicable. Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

(5.) All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of, or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

(6.) A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(7.) No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: (i) The delinquent account is paid in full, (ii) A negotiated repayment schedule is established and at least one payment is received, or (iii) Other arrangements satisfactory to the Department of Commerce are made.

(8.) Buy American-Made Equipment or Products—Applicants are encouraged that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible.

(9.) The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct cost dollar amount in the application, whichever is less.

(e) If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

(f) In accordance with Federal statutes and regulations, no person on grounds of race, color, age, sex, national origin or disability shall be excluded from participation in, denied benefits of, or be subjected to discrimination under any program or activity receiving financial assistance from the NOAA Climate and Global Change program. The NOAA Climate and Global Change Program does not have direct TDD (Telephonic Device for the Deaf) capabilities, but can be reached through the State of Maryland suppled TDD contact number, 800–735–2258, between the hours of 8:00 am–4:30 p.m.

Classification: This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, and SF—LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, and 0348–0046. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paper Reduction Act, unless that collection displays a currently valid OMB control number. This notice has been determined to be not significant for purposes of Executive Order 12866.

Dated: December 20, 2000.

David L. Evans,

Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000309067–0365–02]

RIN 0648–ZA82

National Marine Aquaculture Initiative: Request for Proposals FY–2001

AGENCY: National Sea Grant College Program, Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of request for proposals.

SUMMARY: The purpose of this notice is to advise the public that the Office of Oceanic and Atmospheric Research (OAR), through a process that includes other Department of Commerce agencies, including the national Sea Grant College Program, National Marine Fisheries Service (NMFS), and the National Ocean Service (NOS), is seeking pre-proposals and full proposals to participate in innovative research,

policy and regulatory analysis and development, and outreach and demonstration for the development of marine aquaculture in the United States. For purposes of this competition the Great Lakes, and the species in them, are considered marine. OAR will hold an open competition for up to $5 million per year for two years (pending available funds), with individual projects up to $500,000 per year. The purpose is to develop a highly competitive, sustainable marine aquaculture industry that will meet growing consumer demand for aquatic foods and products that are of high quality, safe, competitively priced and are produced in an environmentally responsible manner.

DATES: Preliminary proposals must be received in the Office of Oceanic and Atmospheric Research by 4 p.m. EST, on February 20, 2001, and full proposals by 4 p.m., May 1, 2001. Preliminary proposal selection and notification will occur by March 9, 2001, and proposal selection will occur by June 10, 2001, and grant start dates will be September 1, 2001.

ADDRESSES: Applicants should be sent to the Office of Oceanic and Atmospheric Research.

Mailing address: Office of Oceanic and Atmospheric Research, Attn: National Marine Aquaculture Initiative Coordinator, NOAA, 1315 East-West Highway, Room 11838, Silver Spring, MD 20910.

For express mail or courier-delivered applications, the following address must be used: National Sea Grant Office, R/SG. Attn: National Marine Aquaculture Initiative Coordinator, NOAA, Room 1877, 1315 East-West Highway, Silver Spring, MD 20910. Phone: 301–713–2435.

Electronic Addresses: To contact: coordinator—Jim.McVey@NOAA.gov; or *Mary.Robinson@NOAA.gov*

NOAA/DOC Aquaculture Task Force members—*www.noaalib.docaqua/frontpage/html.;*

Sea Grant Directors—*www.mdsg.umd.edu/ngo/research;*

Sea Grant Forms—(*www.nsgo.seagrant.org/research/rfp/index.html)*

List of previous projects—www.noaalib.aquadoc/frontpage/html.

FOR FURTHER INFORMATION CONTACT: James P. McVey, National Marine Aquaculture Initiative Coordinator, or Mary Robinson, Secretary, National Sea Grant Office, 301–713–2451, facsimile 301–713–0799.

SUPPLEMENTARY INFORMATION:

I. Program Authority

33 U.S.C. 1121 *et seq.*

Background

Worldwide fisheries production will be inadequate to meet the needs of the world's population without supplementation through aquaculture and marine fish enhancement. The development of a robust aquaculture industry can help meet the seafood needs of the domestic market, reduce imports of fishery products and benefit the nation's balance of trade. In the U.S., marine aquaculture has been very slow to develop for a variety of reasons including the lack of appropriate technologies, difficulty in obtaining financing, concerns over environmental impacts, multi-use conflicts in the coastal zone, and difficult and expensive permit and licensing processes, to name a few. However, none of these problems are insurmountable and the need for creating a marine aquaculture sector has never been greater.

NOAA includes aquaculture in its Strategic Plan under the Build Sustainable Fisheries Initiatives as part of a three-part program that integrates aquaculture, capture fisheries and coastal community development in order to maximize value from coastal resources. This Initiative, in addition to a DOC Aquaculture Initiative, calls for NOAA and DOC to undertake research, demonstration, education/outreach, regulatory and financial support activities in support of marine aquaculture. A NOAA/DOC Aquaculture Task Force has been created to implement the provisions of these Initiatives. NOAA recognizes the role of other Departments such as USDA and DOI and state management partners in aquaculture and coordinates with other Department representatives at the regional level and at the national level through the Joint Sub-Committee on Aquaculture. The NOAA/DOC program is aligned with the National Aquaculture Development Plan created by the Joint Sub-Committee on Aquaculture.

Leveraging and Process

This solicitation allows funding of proposals from institutions of higher education, other non-profits, commercial organizations, state, local and Indian tribal governments and Federal agencies. Matching funds are not required but proposals that combine resources from institutions such as universities, Federal and State agencies, private industry and foundations in a regional context will be looked on most favorably (See "User Relationships" under the Evaluation Criteria).

This will be a two stage competition with two-page pre-proposals used in an initial selection process and full proposals requested from those selected in the pre-proposal process. The pre-proposal process is to reduce the burden of preparing full proposals that do not have a high probability for funding. Those not submitting pre-proposals are not eligible to submit full proposals, but those submitting pre-proposals, and not selected to submit full proposals, have the option to submit full proposals. The funds for this competition are in the Office of Oceanic and Atmospheric Research and Federal agencies may participate, however, the National Sea Grant College Program will administer the grant process.

Funding Availability and Priorities

The Office of Oceanic and Atmospheric Research encourages proposals that address the following: research, development, policy and management, extension and education priorities that have been developed through the NOAA/DOC budget process. FY 2001 funding for this program has not yet been appropriated, but it is anticipated that up to $5 million will be available for this competition in FY 2001, and a similar amount is anticipated for FY 2002. Therefore, we will accept proposals of one-or-two year duration for a maximum of $500,000 per year or a total of $1,000,000 for 2 years. However, funding after year one will depend upon funds received through the Federal budget process and a review of first year progress, and second year funding cannot be guaranteed. Applicants should check with the list of projects funded during the last 2 years to determine what has already been funded and how a proposed project might contribute to the ongoing DOC marine aquaculture initiative (See electronic addresses).

Areas of priority include:

Research. Aquaculture research can include husbandry; system engineering; genetics; disease prevention, diagnosis and control; nutrition; environmental studies; social sciences; marketing; product transport and product development; and other disciplines. We are encouraging research that addresses priority issues that stand as obstacles to the present and future success of the sustainable aquaculture in the United States. Where practicable, multi-disciplinary, regionally-based, studies are encouraged (See "User Relationships" under the Evaluation Criteria). NOAA is seeking proposals on enabling technologies for the existing aquaculture industries and for less developed areas of aquaculture such as

marine ornamentals, water re-use systems, offshore or open ocean systems, and marine species enhancement. We are also looking for proposals on the siting of aquaculture activities and studies on the environmental, genetic and trophic level consequences of marine aquaculture and marine species enhancement. The goal is to develop new industry opportunities using research resources at Federal, State, academic and private industry facilities.

Demonstration. Projects to allow pilot scale testing of technologies to prove concepts, establish economic feasibility, conduct environmental monitoring and modeling, develop multi-use platforms and evaluate marine species enhancement and production technologies will be considered for this competition.

Regulatory issues. Proposals to define and clarify license and permit procedures, address the use of the Exclusive Economic Zone (EEZ) for aquaculture, develop siting criteria and siting methods including aquaculture zoning, develop best management practices and codes of conduct for aquaculture and address the issues of aquaculture in interstate commerce and improved food safety are encouraged and have been identified as high priority topics by industry and federal agencies involved in development of the National Aquaculture Development Plan.

Education/outreach. Education and outreach activities that convey research results to the end users, determine industry needs, educate the public and involve and instruct students in aquaculture-related science will be considered.

Financial support. Proposals that address the financial requirements of aquaculture, help set priorities for financial support and address marketing and trade issues are encouraged. Creation of model business plans that provide financial institutions with decision-making tools for aquaculture investments will also be considered.

Regional and issue coordination. OAR recognizes the need for integrated regional planning and prioritization in order to focus Federal assistance efforts. OAR is seeking proposals to establish mechanisms for broad regional planning that would address NOAA goals to promote environmentally sound aquaculture. In some cases, like water re-use technologies, the issue may have interest across several regions and in such cases a national or multi-regional approach to coordination would be encouraged.

III. Eligibility

Eligible applicants are institutions of higher education, other non-profits, commercial organizations, state, local and Indian tribal governments and Federal agencies. Proposals selected for funding from non-Federal applicants will be funded through a project grant or cooperative agreement under the terms of this notice. Proposals selected for funding from NOAA agencies shall be effected by an intra-agency fund transfer. Proposals selected from a non-NOAA federal agency will be funded through an inter-agency transfer. PLEASE NOTE: Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another Federal agency in excess of their appropriation. Because this announcement is not proposing to product goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

IV. Evaluation Criteria

The evaluation criteria for proposals submitted for support under the National Marine Aquaculture Initiative are as follows:

Scientific or Professional Merit (maximum 45 points)—The clarity of objectives and the level of scientific endeavor or professional merit exhibited in the proposal. The presence of a clear work plan, and probability of success. The innovativeness of the approach to the problem or the unique combination of technologies and disciplines to overcome a significant problem.

Impact of Proposed Project (maximum 30 points)—Significance of the problem relative to the priorities listed in this announcement, and the degree to which the activity, if successful, will advance the state of the science, industry, or state-of-the-art methods for marine aquaculture. The degree to which the project is cost effective relative to the work proposed.

User Relationships (maximum 20 points) degree to which the potential users of the results, *i.e.*, industry, have been involved in the planning of the activity, will be involved in the execution of the activity and/or are providing funds. Degree to which inter-institutional and multi-disciplinary programs have been developed in order to leverage funds and resources. Presence of a plan to disseminate the results to user groups and the public.

Qualifications and Past Record of Investigators (maximum 5 points)—Degree to which investigators are qualified by education, training, and/or experience to execute the proposed activity; record of achievement with previous funding.

Selection Procedures

A pre-proposal review panel, to be organized by the Office of Oceanic and Atmospheric Research, will be convened at the NOAA Offices in Silver Spring, MD and will review all preliminary proposals. The pre-proposal review panel will consist of government, academic, industry and Non-government organization (NGO) representatives. This panel will assign points on an individual basis to each pre-proposal based on the evaluation criteria and priorities contained in this request for proposals. Those receiving an average score of the individual ratings over 81 points will be asked to submit full proposals. No consensus advice will be provided by the review panel to the NOAA/DC Aquaculture Task Force.

Full proposals submitted to the Office of Oceanic and Atmospheric Research will be sent to peer reviewers for written reviews. Reviewers will be asked to evaluate the proposals using the evaluation criteria listed in this announcement. Complete full proposals and accompanying written reviews will be sent to the Office of Oceanic and Atmospheric Research and evaluated by a peer review panel comprised of government, academic, industry and NGO experts organized by OAR. The members of the panel will provide individual point scores for each proposal using the evaluation criteria listed in this announcement and the input provided by the written reviews, but there will be no consensus advice. Their evaluations will be considered by the NOAA/DOC Aquaculture Steering Committee for final project selection. (See address for list of NOAA/DOC Aquaculture Task Force Members.)

For proposals rated above 81 points in average score, the NOAA/DOC Aquaculture Task Force managers will make the final project selection. They will: (a) Verify that projects address the priority areas listed in this announcement; (b) determine whether NOAA or other federal agencies are funding or planning to fund similar projects; (c) determine which proposals best meet the timeliness and overall vision of the NOAA/DOC aquaculture initiative projects; (d) can be accommodated within available funding (see summary and background sections of this document; (e) determine if components of the selected projects should not be funded; (f) determine the total duration of funding appropriate for each proposal; (g) determine the amount of funds available for each proposal.

Consequently, awards may not necessarily be made to the highest-scored proposals. Investigators may be asked to modify objectives, work plans, or budgets prior to approval of the award. Subsequent administrative processing will be in accordance with current NOAA grants procedures. A summary statement of the scientific review by the peer panel will be provided to each applicant.

Applications must reflect the total budget necessary to accomplish the project. Cost sharing is not required but encouraged as part of the selection criteria listed here (See "User Relationships" in the Evaluation Criteria). The appropriateness of all cost-sharing will be determined on the basis of guidance provided in applicable Federal cost principles. The applicants will be bound by the percentage of cost sharing reflected in the grant award.

V. Instructions for Application

What to Submit

Preliminary proposals. Each preliminary proposal should not exceed two typewritten pages using 10 point font or larger, and provide the title of the research project; the title, name and address of investigators and partners; a background section that sets the stage for the work and identifies how the research would fit into any ongoing research in this area; a rationale of why the work should be conducted; a clear statement of objectives; the general methodology that will be used; and an estimated budget amount. The criteria for selection of preliminary proposals are the degree to which they fit the priority areas and evaluation criteria listed in this notice. A one page biography for each investigator should be included and will not be counted in the two page limit.

Full proposals. Each full proposal, that will be requested as the result of the pre-proposal process or those applicants submitting anyway, should include the items listed here. All pages should be single- or double-spaced, typewritten in at least a 10-point font, and printed on metric A4 (210 mm x 297 mm) or 8½" x 11" paper. Brevity will assist reviewers and program staff in dealing effectively with proposals. Therefore, the Project Description may not exceed 15 pages. Tables and visual materials, including charts, graphs, maps, photographs and other pictorial presentations are included in the 15-page limitation. The signature page, summary page, references/literature cited, budgets and budget notes, current and pending support sections and vitae do not count in the 15 page limit. Conformance to the 15-page limitation will be strictly enforced. All information needed for review of the proposal should be included in the main text; no appendices are permitted.

Federal agencies submitting proposals need to follow all of the instructions for submissions up to but not including Standard Application Forms for proposals.

(1) *Signed title page:* The title page should be signed by the Principal Investigator and the institutional representative and should clearly identify the program area being addressed by starting the project title with: National Marine Aquaculture Initiative. The Principal Investigator and institutional representative should be identified by full name, title, organization, telephone number and address. The total amounts of requested Federal funds and matching funds should be listed for each budget period.

(2) *Project Summary:* This information is very important. It is critical that the project summary accurately describe the research being proposed and convey all essential elements of the research. The project summary should not exceed two pages and include: (a) Title: Use the exact title as it appears in the rest of the application. (b) Investigators: List the names and affiliations of each investigator who will significantly contribute to the project. Start with the Principal Investigator. (c) Funding request for each year of the project, including matching funds. (d) Project Period: Start and completion dates: Proposals should request a start date of July 1, 2001 or later. (e) Project Summary: This should include the rationale for the project, the scientific or technical objectives and/or hypotheses to be tested, and a brief summary of work to be completed.

(3) *Project description (15-page limit)* Introduction/background/justification: Subjects that the investigator(s) may wish to include in this section are: (a) Current state of knowledge; (b) contributions that the study will make to the particular discipline or subject area; and (c) contributions the study will make toward addressing the problems identified in the National Marine Aquaculture Initiative.

Research or technical plan: (a) Objectives to be achieved, hypotheses to be tested; (b) Plan of work—discuss how stated project objectives will be achieved; and (c) Role of project personnel.

Output: Describe the project outputs that will contribute to improving and further developing marine aquaculture in the U.S.

Coordination with other program elements: Describe any coordination with other agency programs or ongoing research efforts. Describe any other proposals that are essential to the success of this proposal.

(4) *References and literature citations:* Should be included as appropriate.

(5) *Budget and matching funds justification:* There should be a separate budget for each year of the project as well as a cumulative budget for the entire project. Applicants are encouraged to use the Sea Grant Budget Form 90–4, but may use their own form as long as it provides the same information as the Sea Grant form. Subcontracts should have a separate budget page. Matching funds must be indicated. Applicants should provide justification for all budget items in sufficient detail to enable the reviewers to evaluate the appropriateness of the funding requested. Pay special attention to any travel or supply budgets and provide details. The total dollar amount of indirect costs must not exceed the indirect cost rate negotiated and approved by the cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less. The Sea Grant Budget Form 90–4 is available through the World Wide Web or from the initiative coordinator (See electronic addresses).

(6) *Current and pending support:* Applicants must provide information on all current and pending Federal support for ongoing projects and proposals, including subsequent funding in the case of continuing grants. The proposed project and all other projects or activities requiring a portion of time of the principal investigator and other senior personnel should be included. The relationship between the proposed project and these other projects should be described, and the number of person-months per year to be devoted to the projects must be stated.

(7) *Vitae (2 pages maximum per investigator).* This is not counted in the 15 page maximum.

(8) *Standard application forms:* Standard application forms are not necessary for pre-proposals or for the first request for full proposals. They will only be necessary when projects have been selected for funding.

Applicants may obtain all required application forms from state Sea Grant Programs, through the World Wide Web (see electronic addresses) or from the project coordinator. The following forms must be included:

(a) *Standard Forms 424, Application for Federal Assistance, 424A, Budget*

Information—Non-Construction Programs; and 424B, Assurances—Non-Construction Programs, (Rev 4–88). Applications should clearly identify the program area being addressed by starting the project title with "National Marine Aquaculture Initiative". Please note that both the Principal Investigator and an administrative contact should be identified in Section 5 of the SF424. The form must contain an original signature of the applicant institution's authorized representative.

(b) *Primary applicant certifications.* All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

(i) Non-procurement debarment and suspension. Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Non-procurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

(ii) Drug-Free Workplace. Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Government wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

(iii) Anti-lobbying. Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(iv) Anti-lobbying disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

(c) *Lower tier certifications.* Recipients shall require applicants/bidders for sub-grants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to the Department of Commerce (DOC). SF–LLL submitted by any tier recipient or sub-recipient should be submitted to DOC in accordance with the instructions contained in the award document.

Applications received after the deadline and applications that deviate from the format described will be returned to the sender without review. Facsimile transmissions and electronic mail submission of applications will not be accepted.

How To Submit

Applicants residing in Sea Grant states may, at their discretion, submit preliminary proposals and proposals through the state Sea Grant programs, according to the schedules established by the state programs based on the submission dates to the Office of Oceanic and Atmospheric Research listed above. No culling of pre-proposals will occur at the state Sea Grant level. Sea Grant program directors will receive a list of proposals coming from their state as a courtesy. If applicants choose to submit proposals through Sea Grant programs, applicants should contact the state Sea Grant programs for submission dates and the number of copies required. A list of state Sea Grant program directors and their addresses can be found on the web (See Electronic Addresses) or obtained through Dr. James McVey.

Applicants not residing in Sea Grant states, or not wishing to submit through a state Sea Grant Program may submit directly to the Office of Oceanic and Atmospheric Research (see addresses). Although investigators are not required to submit more than 3 copies of the proposal to the Office of Oceanic and Atmospheric Research the normal review process requires 10 copies. Investigators are encouraged to submit sufficient proposal copies for the full review process if they wish all reviewers to receive color graphics, glossy photographs, nonstandard-sized pages (not 8.5 x 11″), or otherwise unusual materials submitted as part of the proposal. Only three copies of the Federally required forms are needed.

Other Requirements

Federal Policies and Procedures

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of Department of Commerce to cover pre-award costs.

Applicants are hereby notified that they are encouraged to the extent feasible, to purchase American-made products with funding provided under this program.

If an application is selected for funding, Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of Department of Commerce.

No award of Federal funds shall be made to a applicant who has an outstanding delinquent Federal debt or fine until either:

ii. The delinquent account is paid in full,

ii. A negotiated repayment schedule is established and at least one payment is received, or

iii. Other arrangements satisfactory to Department of Commerce are made.

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

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

This notice contains collection-of information requirements subject to the Paperwork Reduction Act. The Sea Grant Project Summary Form and the Sea Grant Budget Form have been approved under the Office of Management and Budget (OMB) Control Number 0648–0362, with estimated times per response of 20 and 15 minutes, respectively. The use of Standard Forms 424, 424A, 424B, and the SF–LLL have been approved by OMB under the respective control numbers 0348–0043, 038–0044, 038–0040 and 038–0046. The response time estimates above 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 on these estimates or any other estimates of these collections to the National Sea Grant Office/NOAA, 1315 East-West Highway, Silver Spring, Maryland 20910 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer). 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, unless that collection of information displays a currently valid OMB Control Number.

Dated: December 20, 2000

David L. Evans,

Assistant Administrator for Oceanic and Atmospheric Research.

[FR Doc. 00–33600 Filed 12–26–00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 001027301–0301–01]

RIN 0648–ZA97

Sea Grant Industry Fellows Program: Request for Proposals for FY 2001

AGENCY: National Sea Grant College Program, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of request for proposals.

SUMMARY: The purpose of this notice is to advise the public that the National Sea Grant College Program (Sea Grant) is entertaining proposals for the Industry Fellowship program to fulfill its broad educational responsibilities and to strengthen ties between academia and industry. With required matching funds from private industrial sponsors, Sea Grant expects to support five new Industry Fellows in FY 2001. Each fellow will be a graduate student selected through national competition, and will be known as a Company Name/Sea Grant Industry Fellow. Proposals must be submitted by academic institutions who have identified a graduate fellow and an industrial sponsor who will provide matching funds.

DATES: Proposals must be submitted before 5 pm (local time) on April 24, 2001 to a state Sea Grant Program office. Applications from non Sea Grant states, if submitted directly to the National Sea Grant Office, must be received by 5 pm (local time) on April 24, 2001.

ADDRESSES: Proposals originating from institutions in Sea grant states must be submitted through the state Sea Grant Program. Proposals originating elsewhere may be submitted either through the nearest Sea Grant Program or directly to the Program Manager at the National Sea Grant Office. The addresses of the Sea Grant College Program directors may be found on Sea Grant's home page (http://www.mdsg.umd.edu/NSGO/index.html) or may also be obtained by contacting the Program Manager at the National Sea Grant Office (see below).

FOR FURTHER INFORMATION CONTACT: Dr. Vijay G. Panchang, Program Manager, National Sea Grant College Program, R/SG, NOAA, 1315 East-West Highway, Silver Spring, MD 20910. Tel. (301) 713–2435 ext. 142; e-mail; Vijay.Panchang@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Program Authority

Authority: 33 U.S.C. 1127(a).

Catalog of Federal Domestic Assistance Number: 11. 417, Sea Grant Support.

II. Program Description

Background

Today's global economy is putting unprecedented demands on the U.S. industrial community for innovation and new technology. This situation presents challenges to industry and universities to develop new paradigms leading to more efficient utilization of available human, fiscal, and technical resources. This can be accomplished through the recruitment of graduates trained in technologies relevant to an industry's future and the creation of opportunities for collaboration between industrial and academic scientists and engineers. Academically well-trained students with exposure to advanced industrial issues constitute a critical component of success in that endeavor.

To strengthen ties between academia and industry, Sea Grant developed the industry Fellows Program in 1995. With required matching funds from private industrial sponsors, Sea Grant expects to support five new Industry Fellows in FY 2001. Each fellow will be a graduate student selected through national competition, and will be known as a Company Name/Sea Grant Industry Fellow.

Fellowship Program Objectives

The goals of the program are: to enhance the education and training provided to top graduate students in U.S. colleges and universities; to provide real-world experience of industrial issues to graduate students and to accelerate their career development; to increase interactions between the nation's top scientists and engineers and their industrial counterparts; to accelerate the exchange of information and technologies between universities and industry; to provide a mechanism for industry to influence Sea Grant research priorities and solve problems of importance to industry; and to forge long-term relationships between Sea Grant colleges and industrial firms.

Program Description

The Sea Grant Industry Fellows Program provides, in cooperation with specific companies, support for highly-qualified graduate students who are pursuing research and development projects on topics of interest to a particular industry/company. In a true partnership, the student, the faculty advisor, the Sea Grant college or institute, and the industry representative work together on a project from beginning to end. Research facilities and the cost of the activity are shared. University faculty are the major source for identifying potential industrial collaborators and suitable research topics. However, other sources can be used to identify potential industrial partners including the Sea Grant Marine Advisory Services, university industrial relations offices, and the Sea Grant Review Panel. Sea Grant directors are encouraged to use a variety of sources in building successful partnerships with industry.

III. Eligibility

Proposals must be prepared by individuals affiliated with institutions

of higher education in the United States. If the institution is in one of the 29 Sea Grant states, then the proposal must be submitted to the state's Sea Grant College Program, who will submit the final grant application to the National Sea Grant Office. If the institution is in a state with no Sea Grant College Program, applications may be submitted to the nearest state Sea Grant College Program who will then submit the final grant application to the National Sea Grant Office, or the institution may submit the application directly to the National Sea Grant Office.

IV. Evaluation Criteria

The evaluation criteria for proposals submitted for support under the Sea Grant Industry Fellows Program are:

A. the importance of the problem and the benefits expected to the industrial partner and the nation due to the advancement of technology (25%).

B. The benefit accruing to the student from his or her participation as a Sea Grant Industry Fellow, including exposure to industrial methods and mentoring by the industrial partner (25%).

C. The level of commitment of the industrial partner to the project, particularly student stipend support (25%).

D. The caliber of the proposed Fellow, including special skills, past experiences, or training that render him/her especially qualified for the proposed project. Participation by the Fellow in proposal preparation will be viewed favorably (25%).

V. Selection Procedures

Individual state Sea Grant Programs receiving proposals will conduct the mail peer review of the proposed projects in accordance with the Evaluation Criteria listed above. Complete proposals and copies of the mail reviews will be sent by the state Sea Grant programs to the National Sea Grant Office. The National Sea Grant Office will conduct mail reviews for proposals submitted directly to it by institutions not in Sea Grant states. The applications will be ranked in accordance with the assigned weights of the above evaluation criteria by an independent peer review panel consisting of government, academic, and industry experts with particular expertise in industry/academic interactions. These panel members will provide individual evaluations on each proposal; thus there will be no consensus advice. Their recommendations and evaluations will be considered by the National Sea Grant Office in the final selection. Only those proposals awarded a minimum score of 50% by the panel will be eligible for funding. For those proposals, the National Sea Grant Office will: (a) Ascertain which proposals best meet the program objectives (stated in Section II), and do not substantially duplicate other projects that are currently funded or are approved for funding by NOAA and other federal agencies, hence, awards may not necessarily be made to the highest-scored proposals; (b) select the proposals to be funded; (c) determine which components of the selected projects will be funded; (d) determine the total duration of funding for each proposal; and (e) determine the amount of funds available for each proposal. Investigators may be asked to modify objectives, work plans, or budgets prior to final approval of the award. Subsequent grant administration procedures will be in accordance with current NOAA grants procedures. A summary statement of the scientific review by the peer panel will be provided to each applicant.

VI. Instructions for Application

Timetable

April 24, 2001, 5 pm (local time)—Proposals due at state Sea Grant Program or at NSGO if application is being submitted by a non Sea Grant College Program.

May 1, 2001, 5 pm (local time)—Proposals received at state Sea Grant Programs due at NSGO.

September 1, 2001 (approximate)—Funds awarded to selected recipients; projects begin.

General Guidelines

Interested members of institutions of higher education in the United States may submit a proposal (See Section III, Eligibility) for a grant to support up to two-thirds of the total budget. The fellowship can be for a maximum of two years, though funding will be in annual increments. No more than $30,000 of federal funds may be requested per year. Indirect costs on federal funds are limited to 10 percent of total modified direct costs. The proposal must include a written matching commitment, equal to at least half the federal request, from the industrial partner to support the budget for the proposed project. Allocation of matching funds must be specified in the budget. Use of the industrial matching funds for student stipend support will be looked on favorably. (See criterion C. under Section IV, Evaluation Criteria.)

The budget should include adequate travel funds for the student, the industrial mentor, and the faculty advisor to meet at least twice per year during the fellowship period, preferably at the site of the industrial partner. The budget may also include up to one month of salary of stipend support for one project participant in addition to the selected Fellow who are affiliated to the academic institution. The selected Fellow may not be changed during the grant period. If the selected Fellow is no longer enrolled as a graduate student but continues to work on the project under the supervision of the grantee institution, federal funds may be used for the Fellow's support for no longer than three months beyond the date on which the Fellow's student status expires. This three-month latitude is meant to enable suitable conclusion of the ongoing phase of work. In other respects, the Fellow will be governed by the institution's rules for graduate research assistants.

Proposal Guidelines

Each full proposal should include the items listed below. All pages should be single- or double-spaced, typewritten in at least 10-point font, and printed on metric A4 (210 mm × 297 mm) or 8½ × 11″ paper. Brevity all assist reviewers and program staff in dealing effectively with proposals. Therefore, the Project Description may not exceed 10 pages. Tables and visual materials, including charts, graphs, maps, photographs and other pictorial presentation are included in the 10-page limit; literature citations are not included in the 10-page limit. Conformance to the 10-page limit will be strictly enforced. All information needed for review of the proposal should be included in the main text; no appendices are permitted.

(1) *Signed Title Page:* The title page should be signed by the Principal Investigator and the institutional representative and should clearly identify the program area being addressed by starting the project title with "Sea Grant Industry Fellow." The Principal Investigator and institutional representative should be identified by full name, title, organization, telephone number and address. The total amount of Federal funds and matching funds being requested should be listed for each budget period.

(2) *Project Summary:* This information is very important. Prior to attending the peer review panel meetings, some of the panelists may read only the project summary. Therefore, it is critical that the project summary accurately describe the research being proposed and convey all essential elements of the research. The project summary should include: 1. Title: Use the exact title as it appears in

the rest of the application. 2. Investigators: List the names and affiliations of each investigator who will significantly contribute to the project. Start with the Principal Investigator. 3. Funding request for each year of the project, including matching funding if appropriate. 4. Project Period: Start and completion dates. Proposal should request a start date of September 1, 2001. 5. Project Summary: This should include the rationale for the project, the scientific or technical objectives and/or hypotheses to be tested, and a brief summary of work to be completed.

(3) *Project Description:* (10-page limit):

(a) Introduction/Background/ Justification: What is the problem being addressed and what is its scientific and economic importance to the advancement of technology, to the cooperating industrial partner, and to the region or nation?

(b) Research or Technical Plan: What are the goals, objectives, and anticipated approach of the proposed project? While a detailed work plan is not expected, the proposal should present evidence that there has been thoughtful consideration of the approach of the problem under study. What capabilities does the industrial partner possess that will benefit the Fellow?

(c) Output/Anticipated Economic Benefits: Upon successful completion of the project, what are the anticipated benefits to the student, the industrial partner, the university and its faculty, the sponsoring Sea Grant program, and the nation?

(d) References and Literature Citations: Should be included but will not be counted in the 10 page project description limit.

(4) *Budget and Budget Justification:* There should be a separate budget for each year of the project as well as a cumulative annual budget for the entire project. Applicants are encouraged to use the Sea Grant Budget Form 90–4, but may use their own form as long as it provides the same information as the Sea Grant form. Subcontractors should have a separate budget page. Matching funds must be indicated; failure to provide adequate matching funds will result in the proposal being rejected without review. Each annual budget should include a separate budget justification page that itemizes all budget items in sufficient detail to enable reviewers to evaluate the appropriateness of the funding requested. Please pay special attention to any travel, supply or equipment budgets and provide details. The total dollar amount or indirect costs must not exceed 10 percent of the total proposed direct costs dollar amount in the application.

(5) *Current and Pending Support:* Applicants must provide information on all current and pending Federal support for ongoing projects and proposals, including subsequent funding in the case of continuing grants. The proposed project and all other projects or activities using Federal assistance and requiring a portion of time of the principal investigator or other senior personnel should be included. The relationship between the proposed project and these other projects should be described, and the number of person-months per year to be devoted to the projects must be stated.

(6) Vitae of the student, the faculty advisor, and the company-appointed research mentor (2 pages maximum per investigator).

(7) Letter of commitment from the industrial partner.

(8) A brief (one-page) description of the collaborating industrial firm.

(9) Proposers are encouraged (but not required) to include a separate page suggesting reviewers that the proposers believe are especially well qualified to review the proposal. Proposers may also designate persons they would prefer not review the proposal, indicating why. These suggestions will be considered during the review process.

(10) *Standard Application Forms:* Applicants may obtain all required application forms through the World Wide Web at http://www.mdsg.umd.edu/NSGO/research/rfp/index.html, from the state Sea Grant Programs or from Dr. Vijay Panchang at the National Sea Grant Office (phone: 301–713–2435 x142 or e-mail: vijay.panchang@noaa.gov). The following forms must be included:

(a) Standard Forms 424, Application for Federal Assistance, 424A, Budget Information—Non-Construction Programs; and 424B, Assurances—Non-Construction Programs, (Rev 4–88). Please note that both the Principal Investigator and an administrative contact should be identified in Section 5 of the SF424. For Section 10, applicants should enter "11.417" for the CFDA Number and "Sea Grant Support" for the title. The form must contain the original signature of an authorized representative of the applying institution.

(b) Primary Applicant Certifications. All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

(i) Nonprocurement Debarment and Suspension. Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

(ii) Drug-Free Workplace. Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

(iii) Anti-Lobbying. Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000; and

(iv) Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

(c) Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to the Department of Commerce (DOC). SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

VII. How To Submit

Preliminary proposals and proposals must be submitted to the state Sea Grant Programs or to the NSGO according to the schedule outlined above (See "Addresses" and "Timetable"). Although investigators are not required to submit more than 3 copies of the proposal, the normal review process requires 10 copies. Investigators are encouraged to submit sufficient proposal copies for the full review

process if they wish all reviewers to receive color, unusually sized (not 8.5" x 11"), or otherwise unusual materials submitted as part of the proposal. Only three copies of the Federally required forms are needed. The addresses of the Sea Grant College Program directors may be found on Sea Grant's World Wide Web home page (http://www.mdsg.umd.edu/NSGO/index.html) or may also be obtained by contacting the Program Manager, Dr. Vijay Panchang, at the National Sea Grant Office (phone: 301–713–2435 x142 or e-mail: vijay.panchang@noaa.gov). Proposals sent to the National Sea Grant Office should be addressed to: National Sea Grant Office, R/SG, Attn: Sea Grant Industry Fellows Program Coordinator, NOAA, Room 11828, 1315 East-West Highway, Silver Spring, MD 20910 (phone 301–713–2435 for express mail applications).

Applications received after the deadline and applications that deviate from the format described above will be returned to the sender without review. Facsimile transmissions and electronic mail submission of applications will not be accepted.

VIII. Other Requirements

(A) Federal Policies and Procedures—Recipients and subrecipients are subject to all Federal laws and Federal and Department of Commerce (DOC) policies, regulations, and procedures applicable to Federal financial assistance awards.

(B) Past Performance—Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(C) Preaward Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover preaward costs.

(D) No Obligation for Future Funding—If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

(E) Delinquent Federal Debts—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(1) The delinquent account is paid in full,

(2) A negotiated repayment schedule is established and at least one payment is received, or

(3) Other arrangements satisfactory to DOC are made.

(F) Name Check Review—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

(G) False Statements—A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(H) Intergovernmental Review—Applications for support from the National Sea Grant College Program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs.

(I) Purchase of American-Made Equipment and Products—Applicants are hereby notified that they will be encouraged to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program.

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action has been determined to be not significant for purpose of E.O. 12866.

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The Sea Grant Project Summary Form and the Sea Grant Budget Form have been approved under Office of Management and Budget (OMB) Control Number 0648–0362, with estimated times per response of 20 and 15 minutes respectively. The use of Standard Forms 424, 424A, 424B, and SF–LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046. The response time estimates above 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 on these estimates or any other aspect of these collections to National Sea Grant Office/NOAA, 1315 East-West Highway, Silver Spring, MD 20910 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer). 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, unless that collection of information displays a currently valid OMB Control Number.

Dated: December 20, 2000.

David L. Evans,

Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 00–32998 Filed 12–26–00; 8:45 am]

BILLING CODE 3510–KA–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112700A]

Marine Mammals; Permits

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

ACTION: Receipt of application for a scientific research permit (605-1607); receipt of application to amend a scientific research permit (782-1446).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of marine mammal species for the purposes of scientific research:

NMFS has received a permit application from Mason T. Weinrich, Whale Center of New England, P.O. Box 159, Gloucester, Massachusetts 01930-0159; NMFS has received a request to amend Permit No. 782-1446 from the National Marine Mammal Laboratory, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115-0070.

DATES: Written or telefaxed comments on the new application and amendment request must be received on or before January 26, 2001.

ADDRESSES: The application, amendment request and related documents are available for review upon written request or by appointment in the following offices:

For permit 782-1446: Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115-0700; phone (206)526-6150; fax (206)526-6426;

For permit 782-1446: Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; phone (562)980-4001; fax (562)980-4018; and,

For permit 605-1607: Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298; phone (508)281-9250; fax (508)281-9371.

All documents may also be requested from the Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910; phone (301)713-2289; fax (301)713-0376.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Tammy Adams, 301/713-2289.

SUPPLEMENTARY INFORMATION: The subject permit and amendment is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*)and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222-227).

Species Covered in This Notice

The following endangered and threatened marine mammal species are covered in this notice:

Humpback whale (*Megaptera novaeangliae*),

Fin whale (*Balaenoptera physalus*),

Sei whale (*Balaenoptera borealis*), and

North Atlantic right whale (*Eubalaena glacialis*)

New Applications Received

File No. 605-1607

Mason T. Weinrich, Whale Center of New England, proposes to assess the health, status and trends of endangered populations of humpback whale (*Megaptera novaeangliae*), fin whale (*Balaenoptera physalus*), sei whale (*Balaenoptera borealis*), and North Atlantic right whale (*Eubalaena glacialis*) off the U.S. Atlantic coast from southern Maine to northern Florida. The applicant proposes to annually take, by close approach, a maximum of 400 humpback whales, 250 fin whales, 50 sei whales, and 50 North Atlantic right whales over a 5-year period. These takes will be used to collect photographs for identifying individuals from all species (minimum approach of 100 feet (30 meters)), for collecting information on the prey densities around humpback, fin and sei whales (minimum approach of 50-100 ft (15-30 m)), for collecting biopsy dart samples from humpback and fin whales (minimum approach of 30-70 ft (9-21 m)), and for attaching suction-cup time-depth recorder and VHF tags to humpback and fin whales (minimum approach of 15-20 ft (5-6 m)). For biopsy sampling, no more than three attempts will be made per whale and for suction-cup tag attachment, no more than two attempts will be made per whale.

Amendment Requests Received

Permit No. 782-1446

The National Marine Mammal Laboratory has requested an amendment (no. 3) to scientific research permit no. 782-1446, issued on May 18, 1998 (63 FR 27265). Permit no. 782-1446 authorizes the permit holder to conduct aerial, ground, and vessel surveys annually for stock assessment of harbor seals, California sea lions, Steller sea lions and northern elephant seals. The permit holder requests authorization to increase the number of California sea lions captured, local or gas anesthetized, instrumented and sampled for a multi-disciplinary study of the role of persistent organochlorine pollutants (OPR) and herpes virus in the development of cancer in California sea lions. California sea lions of both sexes and ages 0 through 5 years are proposed to be taken. Additionally, branded and un-branded 6-month old California sea lions of both sexes are proposed to be captured, sampled and photographed as part of a study to evaluate the condition of branded pups.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the Federal Register, NMFS is forwarding copies of the application and amendment request to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Dated: December 20, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–33002 Filed 12–26–00; 8:45 am]

BILLING CODE: 3510-22-S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

December 20, 2000.

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

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 27, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, 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 U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

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 current limits for Categories 334 and 635 are being increased for swing, reducing the limit for Category 237 to account for the swing being applied.

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 64 FR 71982, published on December 22, 1999). Also see 64 FR 68333, published on December 7, 1999.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 20, 2000.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on December 27, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
237	312,446 dozen.
334	203,009 dozen.
635	453,128 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

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,

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.00–32986 Filed 12–26–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

December 20, 2000.

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

ACTION: Issuing a directive to the Commissioner of Customs establishing the 2001 limits.

EFFECTIVE DATE: January 1, 2001.

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 U.S. Customs website at http://www.customs.gov. For information on embargoes and quota reopenings, call (202) 482–3715.

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 Bilateral Textile Memorandum of Understanding dated February 1, 1997 between the Governments of the United States and the People's Republic of China, as amended on October 31, 2000, establishes limits for textiles and textile products, produced or manufactured in China and exported during the period beginning on January 1, 2001 and extending through December 31, 2001.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

The 2001 limits may be revised if China becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to China.

As a result of a modification to the Harmonized Tariff Schedule of the United States (HTS) that will be effective January 1, 2001, the HTS headings included in Category 666–C are being changed from only heading 6303.92.2000 to both heading 6303.92.2010 and heading 6303.92.2020; this change will not affect the products included in Category 666–C.

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 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 20, 2000.

Commissioner of Customs,

Department of the Treasury, 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 a Memorandum of Understanding dated February 1, 1997 between the Governments of the United States and the People's Republic of China, as amended on October 31, 2000, you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in China and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month limit
Group I	
200, 218, 219, 226, 237, 239, 300/301, 313–315, 317/326, 331, 333–336, 338/339, 340–342, 345, 347/348, 350–352, 359–C [1], 359–V [2], 360–363, 369–D [3], 369–H [4], 369–L [5], 410, 433–436, 438, 440, 442–444, 445/446, 447, 448, 607, 611, 613–615, 617, 631, 633–636, 638/639, 640–643, 644/844, 645/646, 647–652, 659–C [6], 659–H [7], 659–S [8], 666, 669–P [9], 670–L [10], 831, 833, 835, 836, 840, 842 and 845–847, as a group.	1,504,644,950 square meters equivalent.
Sublevels in Group I	
200	782,976 kilograms.
218	11,719,066 square meters.
219	2,551,536 square meters.
226	11,585,825 square meters.
237	2,144,176 dozen.
239	3,202,831 kilograms.
300/301	2,356,842 kilograms.
313	43,710,571 square meters.
314	52,178,170 square meters.
315	137,802,263 square meters.
317/326	22,888,008 square meters of which not more than 4,378,926 square meters shall be in Category 326.
331	5,394,800 dozen pairs.
333	105,167 dozen.
334	335,647 dozen.
335	392,192 dozen.
336	182,725 dozen.
338/339	2,357,344 dozen of which not more than 1,789,482 dozen shall be in Categories 338–S/339–S [11].
340	805,270 dozen of which not more than 402,634 dozen shall be in Category 340–Z [12].

Category	Twelve-month limit
341	697,760 dozen of which not more than 418,657 dozen shall be in Category 341–Y [13].
342	274,678 dozen.
345	129,549 dozen.
347/348	2,355,929 dozen.
350	178,942 dozen.
351	598,199 dozen.
352	1,661,982 dozen.
359–C	648,814 kilograms.
359–V	926,992 kilograms.
360	8,319,243 numbers of which not more than 5,674,528 numbers shall be in Category 360–P [14].
361	4,540,302 numbers.
362	7,541,027 numbers.
363	22,272,149 numbers.
369–D	4,947,276 kilograms.
369–H	5,307,990 kilograms.
369–L	3,559,942 kilograms.
410	1,019,128 square meters of which not more than 816,942 square meters shall be in Category 410–A [15] and not more than 816,942 square meters shall be in Category 410–B [16].
433	21,060 dozen.
434	13,466 dozen.
435	24,733 dozen.
436	15,237 dozen.
438	26,664 dozen.
440	38,094 dozen of which not more than 21,767 dozen shall be in Category 440–M [17].
442	40,324 dozen.
443	130,275 numbers.
444	211,075 numbers.
445/446	288,622 dozen.
447	71,325 dozen.
448	22,501 dozen.
607	3,437,808 kilograms.
611	5,699,904 square meters.
613	8,065,359 square meters.
614	12,674,134 square meters.
615	26,385,245 square meters.
617	18,435,104 square meters.
631	1,380,259 dozen pairs.
633	60,245 dozen.
634	655,427 dozen.
635	691,361 dozen.
636	563,622 dozen.
638/639	2,485,822 dozen.
640	1,400,469 dozen.
641	1,326,654 dozen.
642	356,665 dozen.
643	533,133 numbers.
644/844	3,761,066 numbers.
645/646	828,383 dozen.
647	1,602,387 dozen.
648	1,144,895 dozen.
649	1,016,010 dozen.
650	123,455 dozen.
651	813,077 dozen of which not more than 143,148 dozen shall be in Category 651–B [18].
652	2,971,622 dozen.
659–C	430,451 kilograms.
659–H	2,999,237 kilograms.
659–S	656,544 kilograms.
666	3,727,996 kilograms of which not more than 1,352,171 kilograms shall be in Category 666–C [19].
669–P	2,142,981 kilograms.
670–L	17,055,830 kilograms.
831	615,392 dozen pairs.
833	31,279 dozen.
835	126,690 dozen.
836	298,723 dozen.
840	492,830 dozen.
842	282,405 dozen.
845	2,469,337 dozen.
846	182,707 dozen.
847	1,284,980 dozen.
Group II	
330, 332, 349, 353, 354, 359–O [20], 431, 432, 439, 459, 630, 632, 653, 654 and 659–O [21], as a group.	127,311,012 square meters equivalent.
Group III	
201, 220, 222, 223, 224–V [22], 224–O [23], 225, 227, 229, 369–O [24], 400, 414, 464, 465, 469, 600, 603, 604–O [25], 606, 618–622, 624–629, 665, 669–O [26] and 670–O [27], as a group.	264,087,188 square meters equivalent.
Sublevel in Group III	
224–V	3,838,925 square meters.
225	6,622,878 square meters.
Group IV	
832, 834, 838, 839, 843, 850–852, 858 and 859, as a group.	12,178,652 square meters equivalent.
Levels not in a Group	
369–S [28]	616,284 kilograms.
863–S [29]	8,748,455 numbers.
870	33,598,686 kilograms.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[2] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[4] Category 369–H: only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

[5] Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3018, 4202.92.6091 and 6307.90.9905.

[6] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[7] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[8] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[9] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[10] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907.

[11] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[12] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[13] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[14] Category 360–P: only HTS numbers 6302.21.3010, 6302.21.5010, 6302.21.7010, 6302.21.9010, 6302.31.3010, 6302.31.5010, 6302.31.7010 and 6302.31.9010.

[15] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[16] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[17] Category 440–M: Only HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.3020, 6205.90.4020 and 6211.31.0030.

[18] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[19] Category 666–C: only HTS numbers 6303.92.2010 and 6303.92.2020.

[20] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070 (Category 359–V).

[21] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[22] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[23] Category 224–O: all HTS numbers except 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020 (Category 224–V).

[24] Category 369–O: all HTS numbers except 6302.60.0010, 6302.91.0005 and 6302.91.0045 (Category 369–D); 4202.22.4020, 4202.22.4500, 4202.22.8030 (Category 369–H); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905 (Category 369–L); and 6307.10.2005 (Category 369–S)

[25] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[26] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000 (Category 669–P).

[27] Category 670–O: only HTS numbers 4202.22.4030, 4202.22.8050 and 4202.32.9550.

[28] Category 369–S: only HTS number 6307.10.2005.

[29] Category 863–S: only HTS number 6307.10.2015.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the People's Republic of China.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated December 6, 1999) 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 may be revised if China becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to China.

As a result of a modification to the Harmonized Tariff Schedule of the United States (HTS) that will be effective January 1, 2001, the HTS headings included in Category 666–C are being changed from only heading 6303.92.2000 to both heading 6303.92.2010 and heading 6303.92.2020; this change will not affect the products included in Category 666–C.

The conversion factor for merged Categories 638/639 is 12.96 (square meters equivalent/category unit).

In carrying out the above directions, the Commissioner of Customs 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 to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–32987 Filed 12–26–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Oman

December 20, 2000.

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

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: December 27, 2000.

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 this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

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 current limit for Categories 347/348 is being increased for carryforward.

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 64 FR 71982, published on December 22, 1999). Also see 64 FR 70223, published on December 16, 1999.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 20, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. This directive concern imports of certain cotton and man-made fiber textile products, produced or manufactured in Oman and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on December 27, 2000, you are directed to increase the current limit for Categories 347/348 to 1,219,891 dozen [1], as provided for under the current bilateral textile agreement between the Governments of the United States and the Sultanate of Oman.

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

Sincerely,

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–32988 Filed 12–26–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Consolidation and Amendment of Export Visa Requirements To Include the Electronic Visa Information System for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Cambodia

December 20, 2000.

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

ACTION: Issuing a directive to the Commissioner of Customs consolidating and amending visa requirements.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

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.

In exchange of notes dated December 20, 2000, the Governments of the United States and Cambodia agreed to amend the existing visa arrangement for cotton, wool and man-made fiber textile products in Categories 200–239, 300–369, 400–469, 600–670, 800–899, produced or manufactured in Cambodia and exported on and after January 1, 2001. The amended arrangement consolidates existing provisions and new provisions for the Electronic Visa Information System (ELVIS). The Governments of the United States and Cambodia will implement a 6-month test phase in which, in addition to the

[1] The limit has not been adjusted to account for any imports exported after December 31, 1999.

ELVIS requirements, shipments will continue to be accompanied by a visa. This notice supersedes the notice and letter to the Commissioner of Customs published in the **Federal Register** on December 18, 1998 (63 FR 70110).

A description of the textile and apparel categories in terms of Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Interested persons are advised to take all necessary steps to ensure that textile products entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the visa requirements set forth in the letter published below to the Commissioner of Customs.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 20, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive supersedes the directive issued to you on December 14, 1998 by the Chairman, Committee for the Implementation of Textile Agreements. Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and pursuant to the Export Visa Arrangement, effected by exchange of notes dated December 20, 2000, between the Governments of the United States and Cambodia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 2001, entry into the customs territory of the United States (*i.e.*, the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 200–239, 300–369, 400–469, 600–670, 800–899, including part categories and merged categories, produced or manufactured in Cambodia and exported on and after January 1, 2001 for which the Government of Cambodia has not issued an appropriate export visa and Electronic Visa Information System (ELVIS) transmission fully described below. Should additional categories, part-categories or merged categories become subject to import quotas, the entire category(s), part-category(s) or merged category(s) shall be included in the coverage of this arrangement.

A visa must accompany each shipment of the aforementioned textile products. A circular stamped marking in blue ink will appear on the front of the original invoice. The original visa shall not be stamped on duplicate copies of the invoice. The original invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Visa Requirements

Each visa stamp shall include the following information:

1. The visa number. The visa number shall be in the standard nine digit letter format, beginning with one numeric digit for the last digit of the year of export, followed by the two character alpha code specified by the International Organization for Standardization (ISO) (the code for Cambodia is "KH"), and a six digit serial number identifying the shipment; *e.g.*, 1KH123456.

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The printed name and original signature of the issuing official authorized by the Government of Cambodia.

4. The correct category(s), part category(s), merged category(s), quantity(s) and unit(s) of quantity in the shipment in the unit(s) of quantity provided for in the U.S. Department of Commerce Correlation, and in the Harmonized Tariff Schedule of the United States, Annotated or successor documents and listed in Annex B to this Arrangement shall be reported in the spaces provided within the visa stamp (*e.g.*, "Cat. 340–510 DOZ").

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment. (For example, quota Category 340/640 may be visaed as "Category 340/640" or if the shipment consists solely of Category 340 merchandise, the shipment may be visaed as "Category 340," but not as "Category 640"). If, however, a merged quota category such as 340/640 has a quota sublimit on Category 340, then there must be a "Category 340" visa for the shipment if it includes Category 340 merchandise.

U.S. Customs shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, printed name of the signer, signature, category, quantity or units of quantity are missing, incorrect, illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

The complete name and address of a company performing the major production steps in the manufacturing process of the textile products covered by the visa shall be provided on the textile visa document.

The categories, quantities and date of export shall be those determined by the U.S. Customs Service and those listed in Annex B of this Arrangement. The U.S. Customs Service classifies all imports into the Customs territory of the United States in compliance with U.S. laws and regulations.

If the visa is not acceptable then a new correct visa must be obtained from the Government of Cambodia or a visa waiver may be issued by the U.S. Department of Commerce at the request of the Cambodian Embassy for the Government of Cambodia and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive any quota requirement. Visa waivers will only be issued for classification purposes or for one-time special purpose shipments that are not part of an ongoing commercial enterprise.

If the visaed invoice is deficient, the U.S. Customs Service will not return the original document after entry, but will provide the importer with a certified copy of that visaed invoice for use in obtaining a new correct visaed invoice or a visa waiver.

Only the actual quantity in the shipment and the correct category will be charged to the applicable restraint level.

If a shipment from Cambodia has been allowed entry into the commerce of the United States with either an incorrect visa or no visa and redelivery is requested but is not made, the shipment will be charged to the correct category limit whether or not a replacement visa or visa waiver is provided.

The Government of the United States will make available to the Government of Cambodia, upon request, information on the amounts and categories involved for all items subject to quota administered by the U.S. Customs Service.

ELVIS Requirements

A. Each ELVIS message will include the following information:

i. The visa number as defined above.

ii. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

iii. The correct category(s), part category(s), merged category(s), quantity(s) and unit(s) of quantity of the shipment in the unit(s) of quantity provided for in the U.S. Department of Commerce Correlation and in the Harmonized Tariff Schedule of the United States, Annotated or successor documents and listed in Annex B to this Arrangement.

iv. The quantity of the shipment in the correct units of quantity

v. The manufacturer ID number (MID). The MID shall begin with "KH" followed by the first three characters from each of the first two words of the name of the manufacturer, followed by the largest number on the address line up to the first four digits, followed by three letters from the city name.

B. Entry of a shipment shall not be permitted:

i. if an ELVIS transmission has not been received for the shipment from Cambodia;

ii. if the ELVIS transmission for that shipment is missing any of the following:

a. visa number
b. category or part category
c. quantity
d. unit of measure
e. date of issuance
f. manufacturer ID number;

iii. if the ELVIS transmission for the shipment does not match the information

supplied by the importer with regard to any of the following:

a. visa number
b. category or part category
c. unit of measure;
iv. if the quantity being entered is greater than the quantity transmitted;
v. if the visa number has previously been used, except in the case of a split shipment, or canceled, except when an entry has already been made using the visa number.

C. A new, correct ELVIS transmission from Cambodia is required before a shipment that has been denied entry for one of the circumstances described above will be released.

D. Notwithstanding the previous paragraph, a visa waiver may be accepted, at the discretion of the U.S. Department of Commerce, in lieu of an ELVIS transmission, if the shipment qualifies as a one-time special purpose shipment that is not part of an ongoing commercial enterprise.

E. Shipments will not be released for forty–eight hours in the event of a system failure. If system failure exceeds forty–eight hours, for the remaining period of the system failure, the U.S. Customs Service will release shipments on the basis of the paper visaed document.

F. If a shipment from Cambodia is allowed entry into the commerce of the United States with an incorrect visa, no visa, an incorrect ELVIS transmission, or no ELVIS transmission, and redelivery is requested but is not made, the shipment will be charged to the correct category limit whether or not a replacement visa or waiver is provided or a new ELVIS message is transmitted.

G. The U.S. Customs will provide the Government of Cambodia with a report on visa utilization which is accessible at any time. This report will contain:

a. visa number
b. category number
c. unit of measure
d. quantity charged to quota
e. entry number
f. entry line number

Other Provisions

The date of export is the actual date the merchandise finally leaves the country of origin. For merchandise exported by carrier, this is the day on which the carrier last departs the country of origin.

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued $800 or less do not require a visa or an ELVIS transmission for entry and shall not be charged to Agreement levels, if applicable.

The Government of Cambodia shall provide the Government of the United States with three original, clear, reproducible copies of the visa stamp which shall be the stamp designated for use throughout the entire period the visa arrangements in effect, and three originals of the signatures of the officials authorized to sign visas. The stamp, and any subsequent changes thereto, must be approved by the Government of the United States. The Government of Cambodia shall notify the Government of the United States at least forty-five days prior to a change in the officials authorized to sign the visa.

Except as provided for above, any shipment which is not accompanied by a valid and correct visa and ELVIS transmission shall be denied entry by the Government of the United States unless the Government of Cambodia authorizes the entry and any charges to the agreement levels.

After a six-month test phase is completed, both governments will conduct a joint assessment and make recommendations regarding the elimination of the visa stamp on the commercial invoice within 60 days unless either side presents objections.

Either Government may terminate, in whole or in part, this administrative arrangement by giving ninety days written notice to the other.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–32989 Filed 12–26–00; 8:45 am]

BILLING CODE 3510–DR–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed New Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed application entitled: 2001 AmeriCorps Promise Fellows Application Instructions. Copies of the information collection requests can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by February 26, 2001.

ADDRESSES: Send comments to the Corporation for National and Community Service, Tracy Stone, Director, AmeriCorps Promise Fellows, 1201 New York Avenue, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Tracy Stone at (202) 606–5000, ext. 173 or tstone@cns.gov.

SUPPLEMENTARY INFORMATION:

Comment Request

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Background

- The AmeriCorps Promise Fellows program supports a leadership cadre of AmeriCorps members spearheading community efforts to provide young people with five basic promises:
- Ongoing relationships with caring adults—parents, mentors, tutors or coaches;
- Safe places with structured activities during nonschool hours;
- Healthy start and future;
- Marketable skills through effective education; and
- Opportunities to give back through community service.

The 2001 AmeriCorps Promise Fellows Application Instructions provide the requirements, instructions and forms that applicants need to complete an application to the Corporation for funding.

Current Action

The Corporation seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portion of these application instructions.

Type of Review: New collection.

Agency: Corporation for National and Community Service.

Title: 2001 AmeriCorps Promise Fellows Application Instructions.

OMB Number: None.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for funding.

Total Respondents: 90.

Frequency: Once per year.

Average Time Per Response: 25 hours.

Estimated Total Burden Hours: 2,250 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Technical Assistance Conference Calls

The Corporation will host two conference calls to provide technical assistance regarding the 2001 AmeriCorps Promise Fellows Application Instructions. The primary purpose of these calls is to offer technical assistance to interested applicants to the program. If you have comments regarding the 2001 AmeriCorps Promise Fellows Application Instructions, you may join these calls, however, you are encouraged to submit your comments in writing to the contact person listed in the **ADDRESSES** section of this notice. The calls will occur on Tuesday, January 30, 2001, and on Monday, February 26, 2001, at 2 p.m. Eastern time. To register for these calls, please contact Austin Holland at (202) 606–5000, extension 274 or aholland@cns.gov to receive the information you need to join the call.

Dated: December 21, 2000.

Tracy Stone,

Director, AmeriCorps Promise Fellows.

[FR Doc. 00–32953 Filed 12–26–00; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 26, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

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.

Dated: December 20, 2000.

John Tressler,

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

Office of Postsecondary Education.

Type of Review: Revision of a currently approved collection.

Title: The Evaluation of Exchange, Language, International and Area Studies (EELIAS), NRC, FLAS and IIPP, Undergraduate International Studies and Foreign Language (UISFL) (JS).

Frequency: Annually.

Affected Public: Not-for-profit institutions (primary).

Reporting and Recordkeeping Hour Burden: Responses: 60. Burden Hours: 2100.

Abstract: This fourth program, UISFL, is being added for clearance to the system that already contains the other three. Information collection assists IEGPS in meeting program planning and evaluation requirements. Program officers require performance information to justify continuation funding, and grantees use this information for self evaluations and to request continuation funding from ED.

Requests for copies of the proposed information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@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 Joe Schubart at (202) 708–9266. 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. 00–32910 Filed 12–26–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Notice Inviting Applications for New Awards for Fiscal Years (FYs) 2000 and 2001

AGENCY: Department of Education.

ACTION: Correction.

SUMMARY: On October 18, 2000, a notice inviting applications for new awards under the Office of Special Education and Rehabilitative Services; Grant Applications under the Special Education—State Program Improvement Grants Program was published in the **Federal Register** (65 FR 62536). Under the State Improvement Grant (84.323A) priority on page 62536, in column 2, "Page Limits" section, second sentence, we inadvertently omitted the page limits. The second sentence of the "Page Limits" section reads "You must limit Part III to the equivalent of no more than the number of pages listed under each applicable priority, using the following standards * * *". This notice will correct that sentence to read, "You must limit Part III to the equivalent of no

more than 100 pages using the following standards * * *".

FOR FURTHER INFORMATION CONTACT: For further information on this notice contact Debra Sturdivant, U.S. Department of Education, 600 Independence Avenue, SW, room 3317, Switzer Building, Washington, DC 20202–2641. FAX: (202) 205–8717 (FAX is the preferred method for requesting information). Telephone: (202) 205–8038. Internet: Debra_Sturdivant@ed.gov

If you use a TDD you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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http://ocfo.ed.gov/fedreg.htm
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To use PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC., area at (202) 512–1530.

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

Program Authority: 20 U.S.C. 1482.

Dated: December 20, 2000.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–32886 Filed 12–26–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Teleconference

AGENCY: National Educational Research Policy and Priorities Board, Education.

ACTION: Notice of executive committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Educational Research Policy and Priorities Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting. The public is being given less than 15 day notice of this meeting because of the need to expedite a decision and accommodate the travel schedules of the members.

DATE: January 4, 2001.

Time: 10–11 a.m., EST.

Location: Room 100, 80 F St., NW., Washington, DC 20208–7564.

FOR FURTHER INFORMATION CONTACT: Mary Grace Lucier, Designated Federal Official, National Educational Research Policy and Priorities Board, Washington, DC 20208–7564. Tel.: (202) 219–1628; e-mail: Mary_Grace_Lucier@ed.gov. The main telephone number for the Board is (202) 208–0692.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement to forge a national consensus with respect to a long-term agenda for educational research, development, and dissmeinatrion, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office. The teleconference is open to the public. The Executive Committee will consider changes to its meeting schedule for the year and authorize a staff salary revision. Records are kept of all Board proceedings and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, Suite 100, 80 F St., NW., Washington, DC 20208–7564.

Dated: December 21, 2000.

Rafael Valdivieso,

Executive Director.

[FR Doc. 00–32969 Filed 12–26–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC01–719–000, FERC–719]

Proposed Information Collection and Request for Comments

December 20, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Request for Office of Management and Budget Emergency Processing of proposed information collection and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is providing notice of its request to the Office of Management and Budget (OMB) for emergency processing of a proposed collection of information in connection with the California electricity markets, and is soliciting public comment on that information collection.

DATES: The Commission and OMB must receive comments on or before December 22, 2000.

ADDRESSES: Send comments to:

(1) Michael Miller, Office of the Chief Information Officer, CI–1, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Mr. Miller may be reached by telephone at (202) 208–1415 and by e-mail at *mike.miller@ferc.fed.us*; and

(2) Amy Farrell, FERC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202 NEOB, 725 17th Street NW, Washington, DC 20503. Ms. Farrell may be reached by telephone at (202) 395–7318 or by fax at (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Mary Morton, Office of the General Counsel, Federal Energy Regulatory Commission, (202) 208–0642.

SUPPLEMENTARY INFORMATION: The Federal Power Act directs the Commission to ensure just and reasonable rates for transmission and wholesale sales of electricity in interstate commerce. See 16 U.S.C. 824e(a). To enable the Commission to fulfill this duty, the Federal Power Act also authorizes the Commission to conduct investigations of, and collect information from public utilities. See 16 USC 825, 825c, 825f, and 825j. The Commission has been investigating the California electricity market, which is in a state of emergency with prices at extremely high levels. The Commission has concluded that a primary cause of the problems was that the investor-owned utilities in California (IOUs) were required to sell all the power they generate into the California Power Exchange (PX), and then buy back from the PX all the power they need. This requirement caused IOUs to make most of their purchases on the spot market. On December 15, 2000, the Commission issued an order to remedy the problems in California. *San Diego Gas & Electric Co., et al.* v. *Sellers of Energy and Ancillary Services et al.*, Docket No. EL00–95–000 et al., 93 FERC ¶61, 294. That order includes reporting

requirements that may be subject to the Paperwork Reduction Act, which requires OMB to review certain federal reporting requirements. 44 USC 3507. In light of the critical condition of the California electricity markets, the Commission has requested emergency processing of this proposed information collection.

The Commission's order eliminates the PX buy-sell requirement, and encourages IOUs to purchase most of the power they need (apart from their own self-supplied power) through long-term contracts. For those purchases still made in the spot market, the order directs a technical conference to be held so that a comprehensive monitoring and mitigation program can be proposed and in place by May 1, 2001, to ensure that prices are just and reasonable. During the interim period before the monitoring plan is in place, sellers bidding at or below $150 per megawatt hour (MWh) on the PX or Independent System Operator (ISO) spot markets will receive the market clearing prices, but not more than $150. If sellers bidding above the $150 breakpoint are selected to clear the market, those sellers will receive their actual bids. However, to allow the Commission to monitor the prices charged on the ISO and PX spot markets, the Commission proposes to require sellers to report any hourly transaction exceeding $150. See *San Diego Gas & Electric Co. et al.* v. *Sellers of Energy and Ancillary Services et al.*, slip op. at 31–32.

The Commission will refer to these reports as "California Public Utility Sellers Weekly Reports." Sellers would provide the Public Utility Sellers Weekly Reports on a weekly basis beginning on January 10, 2001 for the week of January 1, 2001. The Reports would contain the following information:

Generation unit;
Transaction starting and ending times;
Price and quantity;
Heat rate (btu/KWh) and type of fuel (natural gas, oil, coal, and other);
If not generated, the purchase price and the name of the supplier;
Total fuel quantity and cost;
NO_x emissions rate (lbs/MWh) and cost;
Variable operation and maintenance costs;
Outage information for all of the seller's individual resources for the transaction period;
Any unsold MWhs which the individual seller has failed to bid into the spot markets during the transaction period; and
All bids submitted into the spot markets during the transaction period.

For more information, see *San Diego Gas & Electric Co., et al.* v. *Sellers of Energy and Ancillary Services et al.*, slip op. at 59–61.

The Commission estimates that 150 sellers could be subject to this reporting requirement, and that during any given week, 10 to 20 of those sellers would likely have to report. Therefore, for the 17 weeks the reporting requirement would be in place, there would be a maximum of 340 reports to be filed. The Commission estimates that it would take each seller 24 hours to develop a system for generating the reports, and no more than 6 hours to generate each individual report. Therefore, the total number of hours it would take to comply with the reporting requirement would be 5,640 hours. The Commission estimates a cost of $50 per hour, based on salaries for professional and clerical staff, as well as direct and indirect overhead costs. Therefore, the total estimated cost of compliance would be $282,000.

The Commission has submitted this reporting requirement to OMB for approval. OMB's regulations describe the process that federal agencies must follow in order to obtain OMB approval of reporting requirements. See 5 CFR Part 1320. The standards for emergency processing of information collections appear at 5 CFR 1320.13. If OMB approves a reporting requirement, then it will assign an information collection control number to that requirement. If a request for information subject to OMB review does not display a valid control number, or if the agency has not provided a justification as to why the control number cannot be displayed, then the recipient is not required to respond.

OMB requires federal agencies seeking approval of reporting requirements to allow the public an opportunity to comment on the proposed reporting requirement. 5 CFR 1320.5(a)(1)(iv). Therefore, the Commission is soliciting comment on:

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

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

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

(4) How to minimize the burden of the collection of this information on respondents, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–32906 Filed 12–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–597–001]

ANR Pipeline Company; Notice of Compliance Filing

December 20, 2000.

Take notice that on November 27, 2000, ANR Pipeline Company (ANR) tendered its compliance filing with the Commission's Order on Filings to Establish Imbalance Netting and Trading Pursuant to Order Nos. 587–G and 587–L [93 FERC ¶ 61,093 (2000)] issued on October 27, 2000 (October 27 Order).

ANR states that the purpose of this filing is to comply with the requirements of the October 27 Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before December 27, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–32903 Filed 12–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–163–001]

Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 20, 2000.

Take notice that on December 13, 2000, Dominion Transmission Inc. (DTI), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets, with an effective date of January 1, 2001:

Substitute Fourth Revised Sheet No. 32

DTI states that the purpose of this filing is to re-submit the above-mentioned revised tariff sheet for inclusion on DTI's FERC Gas Tariff, Third Revised Volume No. 1. DTI is re-submitting this tariff sheet in order to fix capacity release rates that were calculated incorrectly due to an inadvertent clerical error.

DTI states that copies of its letter of transmittal and enclosures have been served upon the parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*

David P. Boergers,

Secretary.

[FR Doc. 00–32904 Filed 12–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–188–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 20, 2000.

Take notice that on December 15, 2000, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain revised tariff sheets listed in Appendix A to the filing, with an effective date of December 1, 2000.

ESNG states that the purpose of this instant filing is to track rate changes attributable to storage services purchased from Transcontinental Gas Pipe Corporation (Transco) under its Rate Schedules GSS and LSS. The costs of the above referenced storage services comprise the rates and charges payable under ESNG's Rate Schedules GSS and LSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedules GSS and LSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–32905 Filed 12–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–177–003]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Compliance Filing

December 20, 2000.

Take notice that on December 4, 2000, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet No. 9, with an effective date of December 1, 2000.

Maritimes states that it is filing the above tariff sheet to implement two negotiated rate agreements pursuant to Rate Schedule MN365 and Section 24 of the General Terms and Conditions of Maritimes' FERC Gas Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 27, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 00–32901 Filed 12–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–404–000]

Northern Natural Gas Company; Notice of Technical Conference

December 20, 2000.

Take notice that a technical conference to further discuss the various issues raised by northern Natural Gas Company's Order No. 637 compliance filing will be held on Tuesday, January 23, 2001, and if necessary, Wednesday January 24, 2001, at 10:00 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 00–32902 Filed 12–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–017]

December 20, 2000.

Take notice that on December 8, 2000,TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Seventeenth Revised Sheet No. 21 and Thirteenth Revised Sheet No. 22, with an effective date of December 8, 2000.

TransColorado states that the tendered tariff sheets revised TransColorado's Tariff to reflect the new, negotiated-rate firm transportation service contract with Enserco Energy, Inc., and the deletion of a negotiated-rate firm transportation service agreement with Burlington Resources Trading Inc. that was terminated November 8, 2000.

TransColorado states that a copy of the filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protest must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 00–32900 Filed 12–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

December 20, 2000.

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

a. *Application Type:* Non-Project Use of Project Lands and Waters

b. *Project No:* 2232–414

c. *Date Filed:* October 23, 2000

d. *Applicant:* Duke Energy Corporation

e. *Name of Project:* Catawba-Wateree Hydroelectric Project

f. *Location:* On Lake Wylie at the Landing Subdivision, in York County, South Carolina. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 USC § 791(a)–825(r).

h. *Applicant Contact:* Mr. E.M. Oakley, Duke Energy Corporation, P.O. Box 1006 (EC12Y), Charlotte, NC 28201–1006. Phone: (704) 382–5778

i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 219–3076, or e-mail address: brian.romanek@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* January 26, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Please include the project number (2232–414) on any comments or motions filed.

k. *Description of Proposal:* Duke Energy Corporation proposes to lease to Crescent Resources, 0.92 acre of project land for the construction of 3 cluster boat docking facilities with a total of 23 boat slips. The boat slips would provide access to the reservoir for the off-water (or interior lot) residents of the Landing Subdivision. No dredging is proposed.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–32896 Filed 12–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

December 20, 2000.

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

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 2232–416.

c. *Date Filed:* November 9, 2000.

d. *Applicant:* Duke Energy Corporation.

e. *Name of Project:* Catawba-Wateree Hydroelectric Project.

f. *Location:* On Lake Norman at Gibbs Cove Subdivision, in Iredell County, North Carolina. The project does not utilize federal or tribal lands.

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

h. *Applicant Contact:* Mr. E.M. Oakley, Duke Energy Corporation, P.O. Box 1006 (EC12Y), Charlotte, NC 28201–1006. Phone: (704) 382–5778.

i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 219–3076, or e-mail address: brian.romanek@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* January 26, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC 20426. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Please include the project number (2232–416) on any comments or motions filed.

k. *Description of Proposal:* Duke Energy proposed to lease to Gibbs Family Partnership, 0.337 acres of project land for the construction of 9 boat slips and one boat launch ramp. The boat slips would provide access to the reservoir for the off-water (or interior lot) residents of the Gibbs Cove Subdivision. The slips would replace those that previously existed at a campground site but were removed due to their poor condition. No dredging is proposed.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirement of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filing must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–32897 Filed 12–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request for Amendment of License Article 412 and Soliciting Comments, Motions to Intervene, and Protests

December 20, 2000.

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

a. *Application Type:* Request for amendment of the license article 412 concerning the project's approved recreation plan.

b. *Project No.* 2506–070.

c. *Date Filed:* October 17, 2000.

d. *Licensee:* Upper Peninsula Power Company.

e. *Name of Project:* Escanaba Project.

f. *Location:* On the Escanaba River, near the township of Escanaba in Delta and Marquette Counties, Michigan. The project site does not involve federal or tribal lands.

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

h. *Licensee Contact:* Mr. Shawn Puzen, Wisconsin Public Service Corporation, 700 Adams Street, P.O. Box 19002, Green Bay, Wisconsin 54307–9002. (920) 433–1094.

i. *FERC Contact:* Any questions on this notice should be addressed to Jean Potvin, jean.potvin@ferc.fed.us, (202) 219–0022.

j. *Deadline for filing comments and or motions:* January 26, 2001.

All documents (original and eight copies) should be filed with Mr. David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii)

and the instructions on the Commission's web site at *http://www.ferc.fed.us/rfi/doorbell.htm.* Please reference the following number, P–2506–070, on any comments or motions filed.

Description of Proposal: The licensee proposes to amend article 412 and the approved recreation plan of the project license by deleting the requirement to construct a boat landing on the impoundment of Dam #1.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling 202–208–1371. The application may be viewed on-line at http:*www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the commission's regulations to: The Secretary, Federal Energy Regulatory commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–32898 Filed 12–26–00; 8:45 am]

BILLING CODE 6717–0–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request for Amendment of License Article 415 and Soliciting Comments, Motions To Intervene, and Protests

December 20, 2000.

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

a. *Application Type:* Request for amendment of license article 415 concerning recreational whitewater release flows.

b. *Project No.:* 2899–096.

c. *Date filed:* September 22, 2000.

d. *Licensee:* Idaho Power Company and Milner Dam, Inc.

e. *Name of Project:* Milner Project

f. *Location:* On the Snake River in Twin Falls and Cassia Counties, Idaho. The project site does not involve federal or tribal lands.

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

h. *Applicant Contact:* Mr. Lewis Wardle, Idaho Power Company, P.O. Box 70, Boise, Idaho 83707. (208) 388–2964.

i. *FERC Contact:* Any questions on this notice should be addressed to Jean Potvin, jean.potvin@ferc.fed.us, (202) 219–0022.

j. *Deadline for filing comments and or motions:* January 26, 2001.

All documents (original and eight copies) should be filed with Mr. David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments and protests may be filed electronically via the internet in lieu of paper. Sec, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell, htm.* Please reference the following number, P–2899–096, on any comments or motions filed.

k. *Description of Proposal:* The licensee proposes to amend article 415 of the project license by: (1) Reducing the number of weekend days they provide whitewater flow releases from twelve to four; (2) condition whitewater releases upon receiving a whitewater release request by two or more boaters by 3 p.m. on Friday before the weekend and after at least two boaters have checked in at the main powerhouse on the day of the whitewater release; and (3) require the licensee to file a report with the Commission by October 1 every other year beginning in 2001 that lists by month for April through June: the number of release requests received; the dates, times and duration of the releases; the amount of flow provided through the bypass reach for each release; and the total number of boaters using the bypass reach for each day whitewater releases were made.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the commission's Public Reference Room, at 888 First Street, NE., Room 2A Washington, DC 20426, or by calling 202–208–1371. The application may be viewed on-line at *http:/// www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS, "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–32899 Filed 12–26–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Notice of Floodplain/Wetlands Involvement for the Boyd-Valley 115-kV Transmission Line Rebuild and Upgrade Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of floodplain/wetlands involvement.

SUMMARY: Western Area Power Administration (Western), a power marketing agency of the U.S. Department of Energy (DOE), is the lead Federal agency for a rebuild and upgrade of 2 miles of Western's existing Boyd-Valley 115-kilovolt (kV) transmission line, which is connected to Platte River Power Authority's (PRPA) Boyd and Valley 115-kV substations. This project is located in Loveland, Colorado. PRPA plans to replace Western's existing H-frame wood pole, 115-kV single-circuit transmission line with two new circuits constructed on double-circuit single-pole steel structures. The rebuild and upgrade will use the same right-of-way as the existing transmission line. Based on the Federal Emergency Management Administration (FEMA) flood insurance maps, the project area is within the 100-year floodplain (base flood) for the Big Thompson River. Approximately 1 mile of the project right-of-way is located within the designated 100-year floodplain. In accordance with the DOE's floodplain/wetland review requirements (10 CFR 1022), Western will prepare a floodplain/wetlands assessment and will perform the proposed actions in a manner so as to avoid or minimize potential harm to or within the affected floodplain/wetlands.

DATES: Comments on the proposed floodplain/wetlands action are due to the address below no later than January 11, 2001.

ADDRESSES: Comments should be addressed to Mr. Jim Hartman, Environment Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, fax (970) 461–7213, email hartman@wapa.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Rodney Jones, Environmental Specialist, Rocky Mountain Customer Service Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, phone (970) 461–7371, email rjones@wapa.gov.

SUPPLEMENTARY INFORMATION: The proposal to rebuild and upgrade the Boyd-Valley transmission line would involve construction activities within the floodplain, including removal of 1 mile of the existing 115-kV wood pole H-frame transmission line and the construction of 1 mile of new double-circuit single-pole steel transmission line. The floodplain/wetlands assessment will examine the proposed rebuild and upgrade of the transmission line. The Boyd-Valley transmission line crosses the floodplain of the Big Thompson River in Larimer County, Colorado in T. 5N., R. 69W., Sections 23 and 24. Maps and further information are available from Western from the contact above.

Dated: December 14, 2000.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 00–32928 Filed 12–26–00; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6923–1]

Policy on Alternative Dispute Resolution

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This document publishes the final policy of the United States Environmental Protection Agency (EPA) regarding the use of alternative dispute resolution ("ADR"). A draft of this policy was published in the **Federal Register** (65 FR 59837) on October 6, 2000, for public comment. The public comment period closed on December 5, 2000, and no comments were received. Therefore, EPA is republishing this policy as a final policy. Nothing in this document creates any right or benefit by a party against the United States.

FOR FURTHER INFORMATION CONTACT: W. Robert Ward, Dispute Resolution Specialist, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., (MC 2310A), Washington, DC, 20460; (202) 564–2922; *adr@epa.gov.*

SUPPLEMENTARY INFORMATION: This final policy is consistent with the Administrative Dispute Resolution Act of 1996 (Public Law 104–320, Oct. 19, 1996, 5 U.S.C. 571–583), which requires, in part, that each federal agency adopt a policy that addresses the use of ADR. It is also consistent with provisions of the Civil Justice Reform Act (Public Law 101–650, Dec. 1, 1990, 28 U.S.C. 471–482), the Alternative Dispute Resolution Act of 1998 (Public Law 105–315, Oct. 30, 1998, 28 U.S.C. 651–658), the Regulatory Negotiation Act of 1996 (Pub. Law 104–320, Oct. 19, 1996, 5 U.S.C. 561–570); the Federal Acquisition Streamlining Act (Pub. Law 103–355, Oct. 13, 1994, 41 U.S.C. 405); the Contracts Disputes Act (41 U.S.C. 601–613); Executive Order 12988, "Civil Justice Reform," February 5, 1996; Executive Order 12979, "Agency Procurement Protests," October 25, 1995; the Federal Acquisition Regulation (48 CFR 33.204); Equal Employment Opportunity Commission regulations (29 CFR part 1614); Presidential Memorandum, "Designation of Interagency Committees to Facilitate and Encourage Use of Alternative Means of Dispute Resolution and Negotiated Rulemaking," May 1, 1998; and the Report of the National Performance Review, "Creating a Government that Works Better and Costs Less," September 7, 1993.

EPA Policy on Alternative Dispute Resolution

Purpose

The U.S. Environmental Protection Agency (EPA or the Agency) strongly supports the use of alternative dispute resolution (ADR) to deal with disputes and potential conflicts. ADR refers to voluntary techniques for preventing and resolving conflict with the help of neutral third parties. Experience within this Agency and elsewhere shows that ADR techniques for preventing and resolving conflicts can have many benefits including:

- Faster resolution of issues;
- More creative, satisfying and enduring solutions;
- Reduced transaction costs;
- Fostering a culture of respect and trust among EPA, its stakeholders, and its employees;
- Improved working relationships;

- Increased likelihood of compliance with environmental laws and regulation;
- Broader stakeholder support for agency programs; and
- Better environmental outcomes.

ADR techniques can be effective in both internal Agency disagreements and external conflicts. ADR allows the Agency to have a more productive work environment and to work better with State, Tribal, and local governments, the regulated community, environmental and public health organizations, and the public. This policy is intended to be flexible enough to respond to the full range of disputes EPA faces, and to achieve these objectives:

- Promote understanding of ADR techniques;
- Encourage routine consideration of ADR approaches to anticipate, prevent, and resolve disputes;
- Increase the use of ADR in EPA business;
- Highlight the importance of addressing confidentiality concerns in ADR processes;
- Promote systematic evaluation and reporting on ADR at EPA; and
- Further the Agency's overall mission through ADR program development.

What does EPA mean by the term "ADR"?

EPA adopts the definition of ADR in the Administrative Dispute Resolution Act of 1996 (ADRA): "any procedure that is used to resolve issues in controversy, including but not limited to, conciliation, facilitation, mediation, fact finding, minitrials, arbitration, and use of ombuds, or any combination thereof." 5 U.S.C. 571(3). All these techniques involve a neutral third party. Depending on the circumstances of a particular dispute, neutrals may be Agency employees or may come from outside EPA. Typically, all aspects of ADR are voluntary, including the decision to participate, the type of process used, and the content of any final agreement.

In what types of situations does EPA encourage the use of ADR?

EPA encourages the use of ADR techniques to prevent and resolve disputes with external parties in many contexts, including adjudications, rulemaking, policy development, administrative and civil judicial enforcement actions, permit issuance, protests of contract awards, administration of contracts and grants, stakeholder involvement, negotiations, and litigation. In addition, EPA encourages the use of ADR techniques to prevent and resolve internal disputes such as workplace grievances and equal employment opportunity complaints, and to improve labor-management partnerships.

While ADR may be appropriate in any of these contexts, the decision to use an ADR technique in a particular matter must reflect an assessment of the specific parties, issues, and other factors. Considerations relevant to the appropriateness of ADR for any particular matter include, at a minimum, the guidelines in section 572 of the ADRA and any applicable Agency guidance on particular ADR techniques or ADR use in specific types of disputes. ADR program staff at EPA headquarters and in the Regions can help the parties assess whether and which form of ADR should be used in a particular matter.

How is EPA organized to support ADR?

EPA's Conflict Prevention and Resolution Center (CPRC) in the Office of General Counsel (OGC) provides ADR services to the entire Agency. The Agency's Dispute Resolution Specialist, designated under the ADRA, is the head of the CPRC. Because the Dispute Resolution Specialist's responsibilities include development and implementation of all Agency ADR policy, Headquarters Offices and Regions are expected to coordinate with the CPRC from the earliest stages in developing any program-specific ADR guidance and in addressing issues during ADR policy implementation. The CPRC also will administer Agency-wide ADR programs, coordinate case management and evaluation, and provide support to program-specific ADR activities. Building on existing ADR efforts at EPA, the CPRC assists other Agency offices in developing effective ways to anticipate, prevent, and resolve disputes, and makes neutral third parties more readily available for those purposes.

Other EPA offices, including the Office of Enforcement and Compliance Assurance, and the Office of Administrative Law Judges, are using ADR to resolve conflicts between the Agency and regulated entities. The Office of Policy, Economics and Innovation and the Office of Cooperative Environmental Management, in partnership with many EPA program offices, use ADR to provide opportunities for stakeholders to contribute to the design of Agency actions that affect them.

EPA Regions have ADR programs that meet their particular needs. For example, in some cases, EPA Regions have identified staff experts to coordinate workplace, enforcement, and other ADR activities. EPA Regions have also used internal and external neutral third parties to foster stakeholder involvement, resolve workplace disputes, help in organizational problem-solving, and mediate enforcement cases. The CPRC will continue to provide support to existing Regional ADR programs and is available to help in developing new ADR efforts.

Anyone interested in exploring the possibility of ADR in an EPA matter can contact the CPRC, a Regional ADR program, or a program office with an established ADR function for information and assistance regarding mechanics, process design, or advice on what to expect from an ADR process.

How should confidentiality be handled in ADR processes?

A thorough discussion of confidentiality is often critical to success in ADR. It is EPA's policy to maintain confidentiality in ADR processes consistent with the ADRA and other applicable law. Section 574 of the ADRA reflects a balancing of the need for confidentiality in ADR with the dual goals of open government and effective law enforcement. Other federal laws may impact the confidentiality of information in specific cases, potentially compelling disclosure or enhancing protection against disclosure (*e.g.*, Inspector General Act, Freedom of Information Act, Privacy Act). The CPRC can provide further information on authorities that may impact confidentiality in a federal ADR process.

The confidentiality needs and concerns of the parties must be discussed early in every ADR process. EPA staff, the parties, and the neutral third party should be aware of how confidentiality operates in the context of federal ADR. Within this context, the parties and the neutral third party should work together to establish a common understanding of how confidentiality protections apply in a specific process. In most cases, this understanding should be recorded in a written confidentiality agreement. This initial work will benefit all parties by clarifying expectations regarding confidentiality before full initiation of the ADR process.

How will EPA promote commitment to and awareness of ADR within the Agency?

Information Sources: The CPRC, in consultation with Agency program offices and Regions, will compile existing information and develop additional information on ADR practice at EPA and will make this information available to EPA personnel through a

website and through the CPRC. Information may include model agreements to mediate, case selection criteria, descriptions of ADR processes, mechanisms for accessing external neutral third parties, case studies, guidance on confidentiality and evaluating ADR processes, directories of EPA ADR contacts, bibliographies, and links to external sources of information.

Training: The Agency strongly encourages all EPA personnel to learn about ADR. Training is crucial not only for those selected to serve as in-house neutrals, but also for negotiators and others who need to understand how ADR can enhance negotiation and agency decision making. The Dispute Resolution Specialist will identify and recommend relevant ADR training. Training sources may include existing EPA training programs, training sponsored by other agencies, newly developed courses, and commercially available training.

This policy affirms a goal of EPA's Labor/Management Partnership Strategic Plan (Spring 2000) to train line managers, first line supervisors, Federal union representatives and other employees in consensual methods of dispute resolution such as ADR and interest-based negotiation. Finally, the Agency will add skills in negotiation and alternative dispute resolution to its inventory of desirable management characteristics used to prepare and select managers for the Senior Executive Service.

Mentoring: The Agency encourages those with ADR experience to share their expertise with other Agency personnel. Mentoring and apprenticing can strengthen EPA's ADR program by expanding the number of staff with ADR skills, increasing opportunities to practice ADR techniques, and providing for exchange between more and less experienced ADR professionals.

Funding: Costs associated with ADR processes, including fees for external neutral third parties, are typically paid in whole or in part by the sponsoring EPA office. Depending on the circumstances, other parties or offices also contribute. The Agency expects each program office at Headquarters and each Region to demonstrate a commitment to ADR by making funds available for ADR processes.

How will EPA measure the success of its ADR programs?

Many federal agencies have shown significant time and money savings from the use of ADR and have received intangible benefits such as improved relationships and broader stakeholder support for their programs. Evaluation is an important way to identify these savings and benefits and is key to systematic improvement of ADR programs. Through evaluation, EPA is committed to measuring the success of its ADR programs and continually improving them to better meet the needs of EPA offices, Regions, and external stakeholders.

Several EPA offices and Regions have already evaluated their ADR efforts. To build on these evaluations and to strengthen the evaluation component of ADR practice across the Agency, the CPRC, consulting with internal and external stakeholders, will develop an evaluation system for ADR at EPA. The evaluation system will include goals and both qualitative and quantitative measures of success.

Where can I get additional information or help with ADR at EPA?

Additional information on ADR contacts within EPA, topics covered in this policy, and others, may be obtained from the CPRC at (202) 564–2922; adr@epa.gov.

What is the legal authority for this policy?

This policy satisfies the requirement of the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571–583, that each federal agency adopt a policy that addresses the use of ADR. The policy is also consistent with the following federal statutes, regulations, and orders:

- Regulatory Negotiation Act of 1996, 5 U.S.C. 561–570.
- Civil Justice Reform Act, 28 U.S.C. 471–482.
- Alternative Dispute Resolution Act of 1998, 28 U.S.C. 651–658.
- Federal Acquisition Streamlining Act, 41 U.S.C. 405.
- Contracts Disputes Act, 41 U.S.C. 601–613.
- Federal Acquisition Regulation, 48 CFR 33.103 & 33.204.
- Federal Sector Equal Employment Opportunity Regulations, 29 CFR part 1614.
- Civil Justice Reform, Executive Order 12988, 61 FR 4729 (Feb. 5, 1996).
- Agency Procurement Protests, Executive Order 12979, 60 FR 55171 (Oct. 27, 1995).
- Presidential Memorandum, "Designation of Interagency Committees to Facilitate and Encourage Use of Alternative Means of Dispute Resolution and Negotiated Rulemaking," May 1, 1998.

Dated: December 18, 2000.

Carol Browner,

Administrator.

[FR Doc. 00–32946 Filed 12–26–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting; Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:28 a.m. on Thursday, December 21, 2000, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider supervisory, resolution, corporate, and personnel matters.

In calling the meeting, the Board determined, on motion of Director Ellen S. Seidman (Director, Office of Thrift Supervision), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: December 21, 2000.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 00–33023 Filed 12–21–00; 4:38 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:04 a.m. on Thursday, December 21, 2000, the Corporation's Board of Directors determined, on motion of Vice Chairman Andrew C.

Hove, Jr., seconded by Director Ellen S. Seidman (Director, Office of Thrift Supervision), concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donna Tanoue, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Memorandum and resolution re: Disclosure and Reporting of Community Reinvestment Act-Related Agreements: Joint Final Rule.

The Board further determined, by the same majority vote, that no notice of the change in the subject matter of the meeting prior to December 20, 2000, was practicable.

Dated: December 21, 2000.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 00–33024 Filed 12–21–00; 4:38 pm]

BILLING CODE 6714–01–M

FEDERAL HOUSING FINANCE BOARD

[No. 2000–N–9]

Notice of Receipt of Petition for Case-by-Case Determination

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Federal Housing Finance Board (Finance Board) has received a Petition from the Federal Home Loan Bank (Bank) of Dallas for Finance Board approval of an application for membership in the Dallas Bank by Washington Mutual Bank, FA (WMBFA), currently a member of the San Francisco Bank, upon completion of the merger of Bank United into WMBFA, under section 4(b) of the Federal Home Loan Bank Act (Bank Act) and § 925.18(a)(2) of the Finance Board's membership regulations. The effect of such an approval would be to allow WMBFA to be a member of both the San Francisco and the Dallas Banks.

ADDRESSES: Send Requests to Intervene to: Elaine L. Baker, Secretary to the Board, at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. Copies of non-confidential portions of the Petition and of non-confidential portions of Requests to Intervene will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: James L. Bothwell, Managing Director and Chief Economist, (202) 408–2821; Scott L. Smith, Acting Director, Office of Policy, Research and Analysis, (202) 408–2991; Deborah F. Silberman, General Counsel, (202) 408–2570. Staff also can be reached by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Section 907.8(a) of the Finance Board's regulations provides that a Bank may file a Petition for Case-by-Case Determination with the Finance Board concerning any matter that may require a determination, finding or approval under the Bank Act or Finance Board regulations by the Board of Directors, and for which no controlling statutory, regulatory or other Finance Board standard previously has been established. *See* 12 CFR 907.8(a). Section 907.12(a) of the Finance Board's regulations requires the Finance Board to promptly publish a notice of receipt of a Petition for Case-by-Case Determination, including a brief summary of the issue(s) involved, in the **Federal Register**. *Id.* § 907.12(a).

The Dallas Bank has filed a Petition for Case-by-Case Determination, dated December 8, 2000, and received by the Finance Board on December 11, 2000 (Petition), requesting that the Finance Board approve the membership of WMBFA in the Dallas Bank upon completion of the merger of Bank United into WMBFA, under section 4(b) of the Bank Act and § 925.18(a)(2) of the Finance Board's regulations, thereby allowing WMBFA to be a member of both the San Francisco and Dallas Banks. *See* 12 U.S.C. 1424(b); 12 CFR 925.18(a)(2). The Finance Board is hereby providing notice of receipt of such Petition, pursuant to 12 CFR 907.12(a).

WMBFA, a member of the San Francisco Bank, is awaiting approval from its primary bank regulators of its proposed acquisition of Bank United, a Dallas Bank member, which would be merged into WMBFA and its charter cancelled. Upon consummation of the merger, WMBFA would seek to retain its current membership in the San Francisco Bank and to gain membership in the Dallas Bank, as if it had maintained the Bank United charter. To that end, on November 24, 2000, WMBFA submitted a membership application to the Dallas Bank. According to the Petition, on November 29, 2000, the Dallas Bank found that WMBFA satisfied the eligibility requirements for membership set forth in section 4 of the Bank Act and part 925 of the Finance Board's regulations, *see* 12 U.S.C. 1424, 12 CFR part 925, and approved WMBFA's membership in the Dallas Bank contingent upon approval by the Finance Board of WMFBA's membership in the Dallas Bank under section 4(b) of the Bank Act and § 925.18(a)(2) of the Finance Board's regulations. 12 U.S.C. 1424(b); 12 CFR 925.18(a)(2).

Section 4(b) of the Bank Act states that:

> An institution eligible to become a member under this section may become a member only of, or secure advances from, the [Bank] of the district in which is located the institution's principal place of business, or of the [B]ank of a district adjoining such district, if demanded by convenience and then only with the approval of the [Finance] Board.

12 U.S.C. 1424(b); *see* 12 CFR 925.18(a)(2).

The Petition supplies a legal opinion that the above-referenced statutory and implementing regulatory language may be interpreted to allow a Bank to be a member of both the Bank in the district where its principal place of business is located, and the Bank in the district adjoining such district and, therefore, that WMBFA may be a member simultaneously of the San Francisco and Dallas Banks.[1] The Petition further argues that, as a factual matter, WMBFA's membership in the Dallas Bank meets the "demanded by convenience" standard set forth in section 4(b) of the Bank Act and § 925.18(a)(2) of the Finance Board's regulations. Accordingly, the Petition requests Finance Board approval of WMBFA's membership in the Dallas Bank under section 4(b) and § 925.18(a)(2), thereby allowing WMBFA to be a member of both the San Francisco and Dallas Banks.

The Petition raises numerous fundamental legal, political and policy issues of first impression that are critical to the structure and function of the Bank System, such as the continued consolidation of the financial institutions industry and the effect of that consolidation on the economics, regional structure and cooperative nature of the Bank System, and the impact of all of those changes on the Banks as they implement a new capital structure.

Pursuant to the Finance Board's procedures under 12 CFR part 907, any member, Bank, or the Office of Finance may file a Request to Intervene in the consideration of the Petition in accordance with 12 CFR 907.11 if it believes its rights may be affected by the issues raised by the Petition. Any Request to Intervene must be in writing and must be filed with the Secretary to

[1] The San Francisco and Dallas Bank districts are adjoining districts.

the Finance Board within 45 days from the date the Petition was filed. Requests to Intervene may include a Request to Appear before the Board of Directors in any meeting conducted under the Finance Board's procedures to consider the Petition.

Dated: December 20, 2000.

William C. Apgar,

HUD Secretary's Designee to the Finance Board

[FR Doc. 00–32916 Filed 12–26–00; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Cooperation Program Application Solicitation for Labor-Management Committees FY2001

A. Introduction

The following is the final solicitation for the Fiscal Year (FY) 2001 cycle of the Labor-Management Cooperation Program as it pertains to the support of labor-management committees. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978 which was initially implemented in FY81. The Act authorizes FMCS to provide assistance in the establishment and operation of company/plant, area, public sector, and industry-wide labor-management committees which:

(A) Have been organized jointly by employers and labor organizations representing employees in that company/plant, area, government agency, or industry; and

(B) Are established for the purpose of improving labor-management relationships, job security, and organizational effectiveness; enhancing economic development; or involving workers in decisions affecting their jobs, including improving communication with respect to subjects of mutual interest and concern.

The Program Description and other sections that follow, as well as a separately published FMCS Financial and Administrative Grants Manual, make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a company/plant, area-wide, industry, or public sector labor-management committee. Directions for obtaining an application kit may be found in Section H. A copy of the Labor-Management Cooperation Act of 1978, included in the application kit, should be reviewed in conjunction with this solicitation.

B. Program Description

Objectives

The Labor-Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate:

(1) To improve communication between representatives of labor and management;

(2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) To assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the company/plant, area, or industry;

(5) To enhance the involvement of workers in making decisions that affect their working lives;

(6) To expand and improve working relationships between workers and managers; and

(7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance in the formation and operation of labor-management committees.

The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the aforementioned general criteria. The term "labor" refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at either the plant (company), area, industry, or public sector levels. A plant or company committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon a particular city, county, contiguous multicounty, or statewide jurisdiction. An industry committee generally consists of a collection of agencies or enterprises and related labor union(s) producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists either of government employees and managers in one or more units of a local or state government, managers and employees of public institutions of higher education, or of employees and managers of public elementary and secondary schools. Those employees must be covered by a formal collective bargaining agreement or other enforceable labor-management agreement. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

In FY 2001, competition will be open to company/plant, area, private industry, and public sector committees. Public Sector committees will be divided into two sub-categories for scoring purposes. One sub-category will consist of committees representing state/local units of government and public institutions of higher education. The second sub-category will consist of public elementary and secondary schools.

Special consideration will be given to committee applications involving innovative or unique efforts. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities that are clearly available under other Federal programs (*e.g.*, job training, mediation of contract disputes, etc.).

Required Program Elements

1. *Problem Statement*—The application should have numbered pages and discuss in detail what specific problem(s) face the company/plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must document the problem(s) using as much relevant data as possible and discuss the full range of impacts these problem(s) could have or are having on the company/plant, government, area, or industry. An industrial or economic profile of the area and workforce prove useful in explaining the problem(s). This section basically discusses *why* the effort is needed.

2. *Results or Benefits Expected*—By using specific goals and objectives, the application must discuss in detail *what* the labor-management committee will accomplish during the life of the grant. Applications that promise to provide objectives *after* a grant is awarded will receive little or no credit in this area. While a goal of "improving communication between employers and employees" may suffice as one over-all goal of a project, the objectives must,

whenever possible, be expressed in *specific* and *measurable* terms. Applicants should focus on the outcome, impacts or changes that the committee's efforts will have. Existing committees should focus on *expansion* efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts of the grantee, as well as the FMCS grants program.s

3. *Approach*—This section of the application specifies *HOW* the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (*e.g.*, members represent 70% of the area of company/plant workforce).

(c) A discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as resumes for staff already on board;

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet (we require meetings at least every other month) as well as any plans to form subordinate committees for particular purposes; and

(f) For applications from existing committees, a discussion of past efforts and accomplishments and how they would integrate with the proposed expanded effort.

4. *Major Milestones*—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for *when* they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant using September 17, 2001, as the start date. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

5. *Evaluation*—Applicants must provide for either an external evaluation or an internal assessment of the project's success in meeting its goals and objectives. An evaluation plan must be developed which briefly discusses what basic questions or issues the assessment will examine and what baseline data the committee staff already has or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected cause.

6. *Letter of Commitment*—Applications must include current letters of commitment from *all* proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and will attend schedule committee meetings. A blanket letter signed by a committee chairperson or other official on behalf of all members is not acceptable. We encourage the use of individual letters submitted on company or union letterhead represented by the individual. The letters should match the names provided under Section 3(b).

7. *Other Requirements*—Applicants are also responsible for the following:

(a) The submission of data indicating approximately how many employees will be covered or represented through the labor-management committee;

(b) From existing committees, a copy of the existing staffing levels, a copy of the by-laws (if any), a breakout of annual operating costs and identification of sources and levels of current financial support;

(c) A detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) An assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) An assurance that committees will be held at least every other month and that written minutes of all committee meetings will be prepared and made available ot FMCS.

Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

(1) The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.

(2) The degree to which appropriate and *measurable* goals and objectives have been developed to address the problems/needs of the applicant.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. This section will also address the degree of innovativeness or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application as indicated in the letters of support.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's feasibility vis-a-vis its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration; and

(8) The value of the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site location, cost, and other qualities that impact upon an applicant's value in encouraging the labor-management committee concept.

C. Eligibility

Eligible grantees include state and local units of government, labor-management committees (or a labor union, management association or company on behalf of a committee that will be created through the grant), and certain third-party private non-profit entities on behalf of one ore more committees to be created through the grant. Federal government agencies and their employees are not eligible.

Third-party private, non-profit entities that can document that a major purpose or function of their organization is the improvement of labor relatings are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under Part B must be followed. Application from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applications from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible, nor will applications signed by entities such as law firms or other third-parties failing to meet the above criteria.

Applicants who received funding under this program in the past for committee operations are generally not eligible to apply. The only exceptions apply to grantees who seek funds on

behalf of an entirely different committee whose efforts are totally outside of the scope of the original grant.

D. Allocations

The FY 2001 appropriation for this program is $1.5 million, of which at least $1,000,000 will be available competitively for new applicants. Specific funding levels will not be established for each type of committee. The review process will be conducted in such a manner that at least two awards will be made in each category (company/plant, industry, public sector, and area), providing that FMCS determines that at least two outstanding applications exist in each category. After these applications are selected for award, the remaining applications will be considered according to merit without regard to category.

In addition to the competitive process identified in the preceding paragraph, FMCS will set aside a sum not to exceed thirty percent of its non-reserved appropriation to be awarded on a non-competitive basis. These funds will be used only to support applications that have been solicited by the Director of the Service and are not subject to the dollar range noted in Section E.

FMCS reserves the right to retain up to five percent of the FY2001 appropriation to contract for program support purposes (such as evaluation) other than administration.

E. Dollar Range and Length of Grants and Continuation Policy

Awards to expand existing or establish new labor-management committees will be for a period of 18 months. If successful progress is made during this initial budget period and all grants are not obligated within 18 months, these grants may be extended for up to six months. No continuation awards will be made.

The dollar range of awards is as follows:

- Up to $65,000 over 18 months for company/plant committees or single department public sector applicants;
- Up to $125,000 per 18-month period for area, industry, and multi-department public sector committee applicants.

Applicants are reminded that these figures represent maximum Federal funds only. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and its required grantee match, applicants may supplement these funds through voluntary contributions from other sources. Applicants are also strongly encouraged to consult with their local or regional FMCS field office to determine what kinds of training may be available at no cost before budgeting for such training in their applications. A list of our field leadership team and their phone numbers is included in the application kit.

F. Cash Match Requirements and Cost Allowability

All applicants must provide at least 10 percent of the total allowable project costs in cash. Matching funds may come from state or local government sources or private sector contributions, but may generally not include other Federal funds. Funds generated by grant-supported efforts are considered "project income," and may not be used for matching purposes.

It will be the policy of this program to reject all requests for indirect or overhead costs as well as "in-kind" match contributions. In addition, grant funds must not be used to supplant private or local/state government funds currently spent for committee purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts. Also, under no circumstances may business or local officials participating on a labor-management committee be compensated out of grant funds for *time* spent at committee meetings or *time* spent in committee training sessions. Applicants generally will not be allowed to claim all or a portion of *existing* full-time staff as an expense or match contribution. For a more complete discussion of cost allowability, applicants are encouraged to consult the FY2001 FMCS Financial and Administrative Grants Manual which will be included in the application kit.

G. Application Submission and Review Process

Applications must be signed by *both* a labor and management representative and be postmarked or electronically transmitted no later than May 19, 2001. No applications or supplementary materials can be accepted after the deadline. It is the responsibility of the applicant to ensure that the application is correctly postmarked by the U.S. Postal Service or other carrier. An original application containing numbered pages, plus *three* copies, should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Grants Program, 2100 K Street NW., Washington, DC 20427. FMCS will not consider videotaped submissions or video attachments to submissions.

After the deadline has passed, all eligible applications will be reviewed and scored initially by one or more Grant Review Boards. The Board(s) will recommend selected applications for rejection or further consideration. The Director, Program Services, will finalize the scoring and selection process. The individual listed as contact person in Item 6 on the application form will generally be the only person with whom FMCS will communicate during the application review process. Please be sure that person is available between June and September of 2001.

All FY2001 grant applicants will be notified of results and all grant awards will be made before September 15, 2001. Applications submitted after the May 19 deadline date or that fail to adhere to eligibility or other major requirements will be administratively rejected by the Director, Program Services.

H. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. Please consult the FMCS web site (www.fmcs.gov) to download forms and information.

These kits and additional information or clarification can be obtained free of charge by contacting the Federal Mediation and Conciliation Service, Labor-Management Grants Program, 2100 K Street NW., Washington, DC 20427; or by calling 202–606–8181.

George W. Buckingham,

Deputy Director, Federal Mediation and Conciliation Service.

[FR Doc. 00–32950 Filed 12–26–00; 8:45 am]

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FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY:

Background

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting

statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Mary M. West—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7860).

Final approval under OMB delegated authority of the extension of three years, with revision, of the following reports:

1. *Report title:* Annual Report of Bank Holding Companies (FR Y–6) and Changes in Investments and Activities of Top-Tier Financial Holding Companies, Bank Holding Companies, and State Member Banks (FR Y–6A).

Agency form number: FR Y–6 and FR Y–6A.

OMB control number: 7100–0124.

Frequency: annual and event-generated.

Reporters: domestic top-tier bank holding companies (BHCs) and unaffiliated state member banks.

Annual reporting hours: 22,552 hours.

Estimated average hours per response: 4 hours.

Number of respondents: 5,638.

Small businesses are not affected.

General description of report: This information collection is mandatory; Section 5(c) of the Bank Holding Company Act (BHC Act) (12 U.S.C. 1844(c)); Section 9 of the FRA (12 U.S.C. 321); Section 25 of the FRA (12 U.S.C. 601–604a); Section 25A of the FRA (12 U.S.C. 611–631); and, Regulation Y (12 CFR part 225). Upon request from a respondent, certain information may be given confidential treatment pursuant to the Freedom of Information Act (5 U.S.C. 552(b)(4) and (6)).

Abstract: All domestic top-tier BHCs file the FR Y–6, which collects financial data, an organization chart and information about shareholders. The Federal Reserve uses the data to monitor holding company operations and determine holding company compliance with the provisions of the Bank Holding Company Act (BHC Act) and Regulation Y (12 CFR 225). The FR Y–6A is an event-generated report filed by top-tier BHCs and unaffiliated state member banks to report changes in regulated investments and activities made pursuant to the Bank Holding Company Act and Regulation Y. The report collects information relating to acquisitions, divestitures, changes in activities, and legal authority. The number of FR Y–6As submitted varies depending on the reportable activities engaged in by each bank holding company.

Current actions: On September 20, 2000, the Federal Reserve issued a **Federal Register** notice (65 FR 56910) requesting public comment on a proposal to extend with revision the FR Y–6 and the FR Y–6A. To reduce burden and cost and make the forms easier to use, the Federal Reserve proposed to replace the FR Y–6A with the FR Y–10. This new form would make the reporting of structure data for domestic and foreign banking organizations more similar, reduce the types of investments to be included, streamline the method of reporting percentage of ownership for nonbanking investments, and simplify the reporting of legal authority (regulatory) and activity codes. To improve the timeliness of the data, the Federal Reserve proposed to vary the reporting schedule of the FR Y–10 for different types of transactions. The Federal Reserve also proposed to revise the FR Y–6 organization charts to exclude small merchant banking investments and to include parallel language from the reportable entities sections of the proposed FR Y–10 instructions, as appropriate.

The comment period ended on November 20, 2000, and the Federal Reserve received public comments from six domestic banking organizations and one attorney. Most commenters favored the format of the proposed FR Y–10, stating that this form was easier to understand and more user-friendly than the FR Y–6A. Also, commenters strongly favored the reduction in the number of reports filed for nonbanking investments. Currently, FR Y–6A reporting form requires information on virtually all investments in which there was control or an ownership interest of greater than 5 percent. However, the proposed FR Y–10 reporting form does not require reports for nonbanking investments of less than 25 percent of a class of voting securities unless the reporter otherwise controls the company.

Several comments were received on the proposed deadlines for these reports. The proposed FR Y–10 included a new 3-day deadline for openings, closings, mergers, sales and relocations of depository institutions, Edge and agreement corporations, and nondepository trusts that are members of the Federal Reserve System. Almost all of the commenters objected to this new deadline, which was proposed to ensure timely receipt of data needed for monetary policy purposes. After reviewing the comments, the Federal Reserve determined that there are alternative ways to capture the information and decided to make all information due thirty days after the transaction. Also, one large banking organization suggested providing the reports in batches on the same day of each month. Federal Reserve Bank staff have worked with banking organizations to establish reporting arrangements to reduce burden, especially for complex reports such as these. They will continue these efforts on a case-by-case basis, as long as all notices are filed in accordance with deadlines specified in the regulations.

One domestic bank suggested additions to the list of business entity types in the Characteristics Schedule of the FR Y–10. The Federal Reserve has taken further steps to reduce the overlap between types of entities reported on the Characteristics Schedule and the types of activities reported on the Investments and Activities Schedule. One large domestic banking organization asked for clarification on reporting ownership in more than one class of voting securities. The Federal Reserve has clarified these issues in the final instructions.

Two large banking organizations objected to including entities on the FR Y–6 organizational chart that were not included in the reportable entities on the FR Y–10. The Federal Reserve has a continuing need for a more complete picture of holding company structure on an annual basis and has maintained the annual reporting requirement for information about investments between 5 and 25 percent on the FR Y–6. In an effort to reduce burden, however, the Federal Reserve has dropped the requirement to annotate the exact percentage ownership of these investments on the FR Y–6 and will allow some flexibility in the manner in which respondents report the additional entities. This may involve methods such as annotating the organization charts for entities not reportable on the FR Y–10 or providing a separate list of these entities.

The Federal Reserve solicited comment on limiting reporting of insurance and securities activities by using materiality thresholds. Although

no comments were received, the Federal Reserve decided to limit reporting of insurance companies in each line of insurance business (1) to those in the line of ownership down to, but not beyond, a functionally regulated firm or (2), in the case of investments that are not functionally regulated, to those above a threshold level based on the relative size and importance of various tiers of insurance companies. The Federal Reserve also decided to use a materiality threshold to limit reporting of securities investments. The Federal Reserve solicits comment on whether such materiality test would be helpful, and, if so, how these test should be defined. Comments must be submitted on or before January 26, 2001. Comments, which should refer to the OMB control number or agency form number, should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mailroom and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room M–P–500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a). A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

One large banking organization thought the burden estimates were understated. The Federal Reserve has been developing an Internet-based collection tool for the FR Y–10 and plans to begin implementation in June 2001. The option of filing the FR Y–10 electronically and the new materiality thresholds for insurance and securities investments should significantly reduce the burden of filing these reports. As described above, the Federal Reserve has taken further steps to streamline and clarify the reporting requirements and believes that the burden estimates for the FR Y–10 and FR Y–6 should remain the same as those in the initial proposal. Also, the hourly burden estimates represent the average amount of the time required for all reporters to complete the reporting requirements; the actual amount of time required will vary based on an institution's size.

One large banking organization asked for additional time to implement the proposed changes. The Federal Reserve will replace the FR Y–6A with the FR Y–10 on June 1, 2001, and will implement the revised FR Y–6 on December 31, 2001. Please see the section below describing the FR Y–10. The Federal Reserve will distribute the final reporting forms and instructions early in 2001 to allow respondent to make system changes necessary to accommodate the new reporting requirements.

2. *Report title:* Annual Report of Foreign Banking Organizations (FR Y–7) and Foreign Banking Organization Structure Report on U.S. Banking and Nonbanking Activities (FR Y–7A)

Agency form number: FR Y–7 and FR Y–7A.

OMB control number: 7100–0125.

Frequency: annual, event-generated.

Reporters: foreign banking organizations (FBOs).

Annual reporting hours: 3,761.

Estimated average hours per response: 11.5 hours.

Number of respondents: 327.

Small businesses are not affected.

General description of report: This information collection is mandatory; Section 5(c) of the BHC Act (12 U.S.C. 1844(c)); Section 7 and 13(a) of the international Banking Act of 1978 (12 U.S.C. 3106 and 3108 (a)); Section 25 of the FRA (12 U.S.C. 601–604a); Section 25A of the FRA (12 U.S.C. 611–631); and, Regulation Y (12 CFR part 225). Upon request from a respondent, certain information may be given confidential treatment pursuant to the Freedom of Information Act (5 U.S.C. 552(b)(4) and (6)).

Abstract: The FR Y–7 is a report filed by all FBOs that engage in banking in the United States, either directly or indirectly, to update their financial and organizational information. The Federal Reserve uses information to assess an FBO's ability to be a continuing source of strength to its U.S. banking operations and to determine compliance with U.S. laws and regulations. The FR Y–7A is a structural report completed by FBOs that engage in banking in the United States, either indirectly through a subsidiary bank, Edge or agreement corporation, or commercial lending company, or directly through a branch or agency. The information contained in this report is used by the Federal Reserve System to assess the foreign banking organization's ability to be a continuing source of strength to its U.S. banking operations and to determine compliance with U.S. laws and regulations.

Current actions: On September 20, 2000, the Federal Reserve is issued a **Federal Register** notice (65 FR 56910) requesting public comment on a proposal to extend with revision the FR Y–7 and the FR Y–7A. To reduce burden and cost and make the forms easier to use, the Federal Reserve proposed to replace the FR Y–7A with the FR Y–10F. This new form would make the reporting of structure data for domestic and foreign banking organizations more similar, reduce the types of investments to be included, streamline the method of reporting percentage of ownership for nonbanking investments, and simplify the reporting of legal authority (regulatory) and activity codes. To improve the timeliness of the data, the Federal Reserve proposed to vary the reporting schedule of the FR Y–10F report for different types of transactions. For consistency purposes, the Federal Reserve proposed that FBOs, which currently file on an annual basis, would report the required structure information on an event-generated basis. The FR Y–10F report would also include data on managed non-U.S. branches, not included on the FR Y–7A report.

The Federal Reserve proposed to change the due date for the FR Y–7 to 90 calendar days after the respondent's fiscal year end to be consistent with the FR Y–6, revise the FR Y–7 organization chart to exclude small merchant banking investments and debts previously contracted (DPC), and include parallel language on reportable entities from the FR Y–10F instructions, as appropriate. Finally, the Federal Reserve proposed to revise the FR Y–7 to include information on business measurement tests currently included on the FR Y–7A.

The comment period ended on November 20, 2000. The Federal Reserve received comments from three FBOs and three foreign banking trade groups regarding the proposed revisions. Most commenters favored the format of the proposed FR Y—10F, stating this form was easier to understand and more user-friendly than the FR Y–7A. Also, commenters strongly favored the reduction in the number of reports filed for nonbanking investments. Currently, FR Y–7A reporting form requires information on virtually all investments in which there was control or ownership interest of greater than 5 percent. However, the proposed FR Y–10F reporting form does

not require reports for nonbanking investments of less than 25 percent of a class of voting securities unless the reporter otherwise controls the company.

Several comments were received on the proposed deadlines for these reports. The proposed FR Y–10F included a new 3-day deadline for openings, closings, mergers, sales and relocations of depository institutions, Edge and agreement corporations, and nondepository trusts that are members of the Federal Reserve System. Almost all of the commenters objected to this new deadline, which was proposed to ensure timely receipt of data needed for monetary policy purposes. After reviewing the comments, the Federal Reserve determined that there are alternative ways to capture the information and decided to make all information due thirty days after the transaction.

The three foreign banking trade groups objected to event-generated filing of all reportable transactions by FBOs on the FR Y–10F. Based on their comments, these institutions may have interpreted that the Federal Reserve proposed to collect information on FBO's worldwide holdings on an event-generated basis; however, this was never the intent of the Federal Reserve's proposal. Currently, FBOs file most of their structure information annually on the FR Y–7A; however, FBOs that are financial holding companies file information about new activities permissible under the Gramm-Leach-Bliley Act of 1999 (GLB Act) on an event-generated basis. The Federal Reserve retained the requirement for event-generated filing by FBOs for entities that are held directly in the United States to make reporting of structure data for domestic and foreign banking organizations more similar and to ensure compliance with the GLB Act. The Federal Reserve clarified the instructions to limit FBO reporting to their holdings in the United States.

For the FR Y–7, all of the commenters objected to shortening the deadline from 120 days after the respondent's fiscal year end to 90 days after their fiscal year end. They stated that FBOs are not allowed to release this type of information prior to distributing it to their shareholders and meeting certain regulatory requirements in their home country. As a result of these comments, the Federal Reserve decided to retain the 120-day deadline.

One foreign banking trade group objected to including entities on the FR Y–7 organizational chart that were not included in the reportable entities on the FR Y–10F. The Federal Reserve has a continuing need for a more complete picture of FBO structure on an annual basis and has maintained the requirement for information about investments between 5 and 25 percent on the FR Y–7. In an effort to reduce burden, however, the Federal Reserve has dropped the requirement to annotate the exact percentage ownership of these investments on the FR Y–7 and will allow some flexibility in the manner in which respondents report the additional entities. This may involve methods such as annotating the organization charts for entities not reportable on the FR Y–10F or providing a separate list of these entities.

Two foreign banking trade organizations suggested conforming the provisions of Section 211.23(h) to the revised FR Y–7 and FR Y–10F and discontinuing the Notification pursuant to Section 211.23(h) of Regulation K on Acquisitions by Foreign Banking Organizations (FR 4002; OMB No. 71100–0110) to avoid unnecessary duplication of effort. The Federal Reserve has already approved discontinuance of the FR 4002 as soon as revisions to Regulation K are finalized; these revisions are anticipated in 2001.

The Federal Reserve solicited comment on limiting reporting of insurance and securities activities by using materially thresholds. Although no comments were received, the Federal Reserve decided to limit reporting of insurance companies in each line of insurance business (1) to those in the line of ownership down to, but not beyond, a functionally regulated firm or (2), in the case of investments that are not functionally regulated, to those above a threshold level based on the relative size and importance of various tiers of insurance companies. The Federal Reserve also decided to use a materiality threshold to limit reporting of securities investments. The Federal Reserve solicits comment on whether such materiality tests would be helpful, and, if so, how these should be defined. Comments must be submitted on or before January 26, 2001. Comments, which should refer to the OMB control number or agency form number, should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mailroom and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room M–P–500 between 9 a.m. and 5 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a). A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

Two foreign banking trade groups thought the burden estimates were understated. One foreign banking trade group asked for the option of filing the information electronically. The Federal Reserve has been developing an Internet-based collection tool for the FR Y–10F and plans to begin implementation in 2001. The option of filing the FR Y–10F electronically and the new materiality thresholds for insurance and securities investments should significantly reduce the burden of filing these reports. As described above, the Federal Reserve has taken further steps to streamline and clarify the reporting requirements and believes that the burden estimates for the FR Y–10F and FR Y–7 should remain the same as those in the initial proposal. Also, the hourly burden estimates represent the average amount of the time required for all reporters to complete the reporting requirements; the actual amount of time required will vary based on an institution's size. Finally, the Federal Reserve clarified that FBOs should limit their reporting to their holdings in the United States.

Two foreign banking trade groups asked for additional time for FBOs to implement the proposed changes. The Federal Reserve will replace the FR Y–7A with the FR Y–10F on June 1, 2001, and will implement the revised FR Y–7 on December 31, 2001. Please see the section below describing the FR Y–10. The Federal Reserve will distribute the final reporting forms and instructions early in 2001 to allow respondent to make system changes necessary to accommodate the new reporting requirements.

Final approval under OMB delegated authority of revision, without extension, of the following report:

Report title: Changes in Foreign Investments Made Pursuant to Regulation K.

Agency form number: FR 2064.

OMB control number: 7100–0109.

Frequency: event-generated.

Recordkeepers: BHCs, member banks, and Edge and agreement corporations.

Annual recordkeeping hours: 320.

Estimated average hours per response: 2 hours.

Number of respondents: 40.

Small businesses are not affected.

General description of report: This information collection is considered mandatory; Section 5(c) of the BHC Act (12 U.S.C. 1844(c)); Section 7 and 13(a) of the international Banking Act of 1978 (12 U.S.C. 3106 and 3108 (a)); Section 25 of the FRA (12 U.S.C. 601–604a); Section 25A of the FRA (12 U.S.C. 611–631); and, Regulation K (12 CFR part 211.7(c)); and was given confidential treatment (5 U.S.C. 552(b)(4) and (b)(6)).

Abstract: Changes in Foreign Investments Made Pursuant to Regulation K currently is an event-generated report filed by BHCs, member banks, and Edge and agreement corporations to record changes in their international investments. The Federal Reserve uses the information to monitor investments in the international operations of U.S. banking organizations and to fulfill its supervisory responsibilities under Regulation K.

Current Actions: On September 20, 2000, the Federal Reserve issued a **Federal Register** notice (65 FR 56910) requesting public comment on a proposal to revise without extension the FR 2064. The Federal Reserve proposed to revise the FR 2064 to include only the information on historical cost of investments, as required by Regulation K, move structure information to the FR Y–10, raise the threshold for reporting these foreign investments, and change the reporting frequency of the FR 2064 from event-generated to quarterly. The comment period ended November 20, 2000.

One large domestic banking organization criticized the inconsistencies in the reporting thresholds for the FR 2064 and the FRY–10 and the bifurcation of Regulation K reporting between these two reports. Another large domestic banking organization suggested further deletions to the items listed on the FR 2064. After further consideration, the Federal Reserve decided to eliminate the collection of the FR 2064 report. However, Federal Reserve examiners have a continuing need to monitor compliance with the Federal Reserve Act and relevant sections of Regulation K. The Federal Reserve will replace this reporting requirement with a requirement to maintain records of comparable information, effective June 1, 2001, and will issue instructions for this recordkeeping requirement in the near future.

Final approval under OMB delegated authority the implementation of the following reports:

Report title: Report of Changes in Organizational Structure (FRY–10) and Report of Changes in FBO Organizational Structure (FR Y–10F).

Agency form number: FR Y–10 and FR Y–10F.

OMB control number: 71–0297.

Frequency: event-generated.

Reporters: FR Y–10: bank holding companies, member banks not affiliated with a bank holding company, Edge and agreement corporations; FR Y–10F: foreign banking organizations.

Annual reporting hours: FR Y–10: 12,240 hours; FR Y–10F: 2,044 hours.

Estimated average hours per response: 1.25 hours.

Number of respondents: FR Y–10: 2,448; FR Y–10F:327.

Small businesses are not affected.

General description of report: These information collections are mandatory; Section 5(c) of the Bank Holding Company Act (BHC Act) 12 U.S.C. 1844(c)); Section 4 of the BHC Act (12 U.S.C. 1843(k)); Section 25 of the FRA (12 U.S.C. 601–604a); Section 25A of the FRA (12 U.S.C. 611–631); and, Regulation Y (12 CFR part 225); FR Y–10 only—Section 9 of the FRA (12 U.S.C. 321); FR Y–10F only—Section 7 and 13(a) of the international Banking Act of 1978 (12 U.S.C. 3106 and 3108 (a)). Upon request from a respondent, certain information may be given confidential treatment pursuant to the Freedom of Information Act (5 U.S.C. 552(b)(4) and (6)).

Current actions: On September 20, 2000, the Federal Reserve issued a **Federal Register** notice (65 FR 56910) requesting public comment on a proposal to implement the FR Y–10 and the FR Y–10F. To reduce burden and cost and make the forms easier to use, the Federal Reserve proposed to reformat the FR Y–6A and FR Y–7A into two forms, the FR Y–10 and FR Y–10F, respectively. These proposed forms would make the reporting of structure data for domestic and foreign banking organizations more similar, reduce the types of investments to be included, streamline the method of reporting percentage of ownership for nonbanking investments, and simplify the reporting of legal authority (regulatory) and activity codes. To improve the timeliness of the data, the Federal Reserve proposed to vary the reporting schedule of the FR Y–10 and FR Y–10F reports for different types of transactions. For consistency purposes, the Federal Reserve proposed that FBOs, which currently file on an annual basis, would report the required structure information on an event-generated basis. The FR Y–10F report would also include data on managed non-U.S. branches, not included on the FR Y–7A report. In addition structure information would be moved from the FR 2064 to the FR Y–10. The comment period ended on November 20, 2000. Comments received on these two forms have been addressed in the Current Actions section of the FR Y–6A, FR Y–7A, and FR 2064.

Board of Governors of the Federal Reserve System, December 20, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–32911 Filed 12–26–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 19817 (j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors/ Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 10, 2001.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Pedro Gil Morrison , Palm Beach, Florida; to retain voting shares of Palm Beach National Holding Company, Palm Beach, Florida, and thereby indirectly retain voting shares of Palm Beach National Bank and Trust Company, Palm Beach, Florida.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Roy W. Messerschmidt 2000 Irrevocable Trust, West Des Moines, Iowa, and Richard Roy Messerschmidt, West Des Moines, Iowa, and William Ross Messerschmidt, Dallas Center, Iowa; as Trustees; to retain voting shares of FNB Holding, Co., West Des Moines, Iowa, and thereby indirectly retain

voting shares of First Bank, West Des Moines, Iowa.

C. **Federal Reserve Bank of Dallas**(W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. James Ross McKnight, Throckmorton, Texas; to acquire additional voting shares of Throckmorton Bancshares, Inc., Throckmorton, Texas, and thereby indirectly acquire additional voting shares of First National Bank, Throckmorton, Texas.

Board of Governors of the Federal Reserve System, December 20, 2000.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 00–32913 Filed 12–26–00; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 19, 2001.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Clayco Banc Corporation, Claycomo, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Clayco Bancshares, Inc., Claycomo, Missouri; and Clayco State Bank, Claycomo, Missouri.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Liberty Bancorp, South San Francisco, California; to become a bank holding company by acquiring 100 percent of the voting shares of Liberty Bank, South San Francisco, California.

Board of Governors of the Federal Reserve System, December 20, 2000.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 00–32912 Filed 12–26–00; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 19, 2001.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. PSB Bancorp, Inc., Philadelphia, Pennsylvania; to acquire10.6 percent of the voting shares of Jade Financial Corp., Feasterville, Pennsylvania, and thereby indirectly acquire voting shares of IGA Federal Savings Bank, Feasterville, Pennsylvania, and thereby engage in owning, controlling or operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, December 20, 2000.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 00–32914 Filed 12–26–00; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substance and Disease Registry

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

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) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Hanford Health Effects Subcommittee (HHES).

Times and Dates: 8:30 a.m.—5 p.m., January 25, 2001. 7 p.m.—9 p.m., January 25, 2001. 8:30 a.m.—3 p.m., January 26, 2001.

Place: West Coast Tri-Cities Hotel, 1101 N. Columbia Center Blvd, Kennewick, WA 99336. Telephone: (509) 783–0611.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Background

Under a Memorandum of Understanding (MOU) signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health

activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles. In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to receive an update from the Inter-tribal Council on Hanford Health Projects; to review and approve the Minutes of the previous meeting; to receive updates from ATSDR/NCEH and NIOSH; to receive reports from the Outreach, Public Health Assessment, Public Health Activities, and the Studies Workgroups; and to address other issues and topics, as necessary.

Matters to be Discussed: Agenda items include a presentation and discussion on the national health effects subcommittee evaluations, presentation on Hanford Community Health Project, and agency updates. Agenda items are subject to change as priorities dictate.

CONTACT PERSONS FOR MORE INFORMATION: French Bell, Executive Secretary HHES, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE. M/S E–54, Atlanta, Georgia 30333, telephone 1–888–42–ATSDR(28737), fax 404/639–4699.

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 the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 18, 2000.

Julia M. Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–32931 Filed 12–26–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Oak Ridge Reservation Health Effects Subcommittee

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) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Oak Ridge Reservation Health Effects Subcommittee (ORRHES).

Times and Dates: 9 a.m.–6:30 p.m., January 18, 2001. 8:30 a.m.–4 p.m., January 19, 2001.

Place: YWCA, 1660 Oak Ridge Turnpike, Oak Ridge, Tennessee, 37830. Telephone: (865) 482–9922

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 150 people.

Background: Under a Memorandum of Understanding (MOU) signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles. In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, pertaining to CDC's and ATSDR's public health activities and research at this DOE site. Activities shall focus on providing the public with a vehicle to express concerns and provide advice and recommendations to CDC and ATSDR. The purpose of this meeting is to receive updates from ATSDR and CDC, and to address other issues and topics, as necessary.

Matters to be Discussed: Agenda items include a presentation and discussion on the needs assessment from George Washington University, an overview of the ATSDR Public Health Assessment process, updates from the Agenda, Guidance Document, and Outreach/Communications Work Groups, and to receive agency updates. Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE, M/S E–54, Atlanta, Georgia 30333, telephone 1–888–42–ATSDR(28737), fax 404/639–4699.

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 the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 18, 2000.

Julia M. Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–32933 Filed 12–26–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substance and Disease Registry

Hanford Health Projects Inter-Tribal Council et al.; Notice of Meeting

Public meeting of the Inter-tribal Council on Hanford Health Projects (ICHHP) in association with the Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee.

Name: Public meeting of the Inter-tribal Council on Hanford Health Projects (ICHHP) in association with the Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Hanford Health Effects Subcommittee (HHES).

Time and Date: 9 a.m.–4:00 p.m., January 24, 2001.

Place: West Coast Tri-Cities Hotel, 1101 North Columbia Center Boulevard, Kennewick, Washington.

Telephone: (509) 783–0611.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background

Under a Memorandum of Understanding (MOU) signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC. Community Involvement is a critical part of ATSDR's and CDC's energy-related research and activities and input from members of the ICHHP is part of these efforts. The ICHHP will work with the HHES to provide input on American Indian health effects at the Hanford, Washington site.

Purpose: The purpose of this meeting is to address issues that are unique to tribal involvement with the HHES, and agency updates.

Matters to be Discussed: Agenda items will include a dialogue on issues that are unique to tribal involvement with the HHES. This will include updating tribal members of the cooperative agreement activities in environmental health capacity building and providing support for tribal involvement in and representation on the HHES. Agenda items are subject to change as priorities dictate.

CONTACT PERSONS FOR MORE INFORMATION: Dean Seneca, Executive Secretary, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE M/S E–54 Atlanta, Georgia 30333, telephone 1–888–42-ATSDR · (28737), fax 404/639–4699.

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 the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 18, 2000.

Julia M. Fuller,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–32932 Filed 12–26–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cooperative Agreement to Support the Shellfish and Seafood Safety Assistance Project; Notice to Accept and Consider a Single Source Application; Availability of Funds for Fiscal Year 2001

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Food Safety and Applied Nutrition (CFSAN), Office of Seafood (OS) is announcing its intent to award, noncompetitively, a cooperative agreement to the Interstate Shellfish Sanitation Conference (ISSC) in the amount of $275,000 for the first year. Subject to the availability of Federal funds and successful performance, 4 additional years of support will be available. This effort will enhance FDA's molluscan shellfish sanitation program and provide the public greater assurance of the quality and safety of these products.

DATES: Submit application by January 26, 2001.

ADDRESSES: An application is available from and should be submitted to: Rosemary Springer, Grants Management Specialist, Division of Contracts and Procurement Management (HFA–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7182. If an application is hand-carried or commercially delivered, it should be addressed to rm. 2129, 5630 Fishers Lane, Rockville, MD 20857, FAX 301–827–7106, e-mail address: rspringe@oc.fda.gov.

FOR FURTHER INFORMATION CONTACT: *For the administrative and financial management aspects of this notice:* Rosemary Springer, Grants Management Specialist (address above).

Regarding the programmatic aspects: Paul W. Distefano, Office of Seafood (HFS–417), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204 202–418–3149.

SUPPLEMENTARY INFORMATION: This project is authorized under section 301 of the Public Health Service Act (42 U.S.C 241). This activity is generally described in the Catalog of Federal Domestic Assistance at 93.103. This application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs (45 CFR part 100).

This project will: (1) Enhance both the effectiveness and uniformity of the molluscan shellfish program by: (a) Improving the flow of information between Federal and State regulatory agencies, industry, and the consumer, and (b) strengthening State activities by providing assistance in such areas as procedural and policy guidance, technical training, research, consumer education, and the assurance of conformity to the National Shellfish Sanitation Program (NSSP); and (2) provide for research on *Vibrio*

vulnificus, which, although not normally a threat to healthy individuals, can cause serious illness and death in individuals with certain preexisting conditions and on *Vibrio parahaemolyticus*, which can cause illness in healthy individuals as well as compromised individuals. This research is intended to provide information to establish science-based controls to protect consumers from *V. vulnificus* and *V. parahaemolyticus* infection.

I. Availability of Funds

FDA will fund this cooperative agreement at a level of approximately $275,000 for the first year. An additional 4 years of support will be available, depending upon fiscal year appropriations, continued support from other government agencies, and successful performance. It is anticipated that this cooperative agreement will commence on or before March 1, 2001. This project may be supplemented over the 5 year period based on annual appropriations language.

II. Background

Molluscan shellfish have been identified as the source of a majority of seafood-borne illnesses and are the subject of congressional, industry, and public concern. Therefore, FDA has given high priority to enhance the agency program and to provide the public greater assurance of the quality and safety of these products. One such enhancement has been the incorporation of FDA's seafood hazard analysis critical control point (HACCP) regulation into the NSSP Model Ordinance. FDA administers the NSSP and the NSSP Model Ordinance, which serves as guidance for State shellfish sanitation programs and State regulations concerning shellfish safety.

In 1982, the ISSC was formed to provide a formal structure wherein State regulatory authorities can establish updated guidelines and procedures for the uniform application of that guidance for the sanitary control of the shellfish industry. The ISSC is a voluntary organization and is open to all persons interested in fostering controls that will ensure sources of safe and sanitary shellfish. In 1984, FDA recognized the ISSC through a memorandum of understanding (MOU) and continues to recognize ISSC as the primary voluntary national organization of State shellfish regulatory officials that will provide guidance and counsel to the States on matters of sanitary control of shellfish.

In 1993, FDA awarded a noncompetitive grant to ISSC for 1 year and provided support for an additional 2 years because of satisfactory performance. FDA received $75,000 a year from the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Services (NMFS) in support of the grant. Combined with the NMFS funds, the ISSC cooperative agreement was funded for a total of $465,000 over the 3 years.

In February 1996, FDA awarded another noncompetitive cooperative grant to ISSC for 1 year with an additional 4 years based on satisfactory performance. The approved funding level per year was $150,000.

A. Substantial Accomplishments Under the Initial 1996 ISSC Award Include:

1. Coordinated annual shellfish safety meetings of Federal regulators, State regulators, industry members for improving shellfish safety controls in the NSSP Model Ordinance.
2. Facilitated incorporation and implementation of HACCP into the NSSP Model Ordinance.
3. Facilitated the resolution of shellfish safety issues between several States and FDA.
4. Coordinated the revision of NSSP Model Ordinance and assisted in its distribution.
5. Coordinated development and oversight of an interim *V. parahaemolyticus* control plan.
6. Developed an educational training video concerning illegal shellfish harvesting.
7. Developed and maintained an Internet site for continuous accessibility to molluscan shellfish safety related information.

Starting in September 1996, FDA awarded supplemental funding to the ISSC cooperative agreement providing for the implementation and enhancement of activities associated with *V. vulnificus* and *V. parahaemolyticus*.

V. vulnificus is a pathogen found in the estuarine environment. *V. vulnificus* bacteria are not normally a threat to healthy individuals. However, for individuals with preexisting chronic medical conditions such as liver disease, alcoholism, and hemochromatosis, *V. vulnificus* can cause serious illness and death. Each year, between 12 and 40 cases of *V. vulnificus* illness associated with consumption of raw molluscan shellfish are reported to public health authorities in the United States.

V. parahaemolyticus is also a pathogen found in the estuarine environment and can cause serious illness and death to individuals with preexisting chronic medical conditions such as liver disease and alcoholism. But, unlike *V. vulnificus*, *V. parahaemolyticus* bacteria can cause illness in healthy individuals. Each year, sporadic cases of *V. parahaemolyticus* associated with raw molluscan shellfish consumption are reported to public health authorities in the United States. Recently, however, a number of *V. parahaemolyticus* outbreaks associated with consumption of raw shellfish from the northern Pacific Coast, northern Atlantic Coast, and Gulf Coast have occurred.

B. Substantial Accomplishments of the ISSC in Relation to V. Vulnificus and V. Parahaemolyticus Supplemental Funding Include:

1. Coordinated the development of shellstock time-temperature controls for *V. vulnificus* and *V. parahaemolyticus*.
2. Provided funding for *V. vulnificus* virulent strain identification research.
3. Provided funding for research on the effects of ice chilling on *V. vulnificus* and *V. parahaemolyticus*.
4. Provided funding for research on the influence of water and air temperature, dissolved oxygen, and nutrients on *V. parahaemolytics* concentrations in Pacific oysters.
5. Provided funding to conduct a retail study to define levels of *V. vulnificus* and *V. parahaemolytics* at points of purchase.
6. Provided funding to conduct an economic assessment of mandating post-harvest treatment of oysters.
7. Developed *V. parahaemolytics* laboratory methodology training video.
8. Developed and broadcasted a public service announcement for alerting at risk consumers of the dangers associated with raw shellfish consumption.

III. Purpose

The ISSC was formed as a partnership of State shellfish control officials representing both environmental and public health agencies; Federal agencies including FDA, the Environmental Protection Agency, and the Department of Commerce, NMFS; and representatives from industry, academia, and foreign governments and industry. More than 30 States are members of the ISSC, including all 23 coastal shellfish-producing States.

The proposed cooperative agreement with ISSC will continue: (1) To address the need to improve information exchange and transfer among States, Federal agencies, industry, and consumers; (2) to strengthen State activities by providing them with procedural and policy guidance, technical training, research, and consumer education; and (3) to enhance

research efforts and projects which will contribute significantly to the ISSC/FDA ability to identify scientifically defensible controls which reduce the incidence of *V. vulnificus* and *V. parahaemolyticus* illness.

IV. Substantive Involvement by FDA

1. FDA will monitor and evaluate the ISSC's overall conduct under this cooperative agreement.
2. FDA will have representation on the ISSC executive board, committees, and task forces.
3. FDA will collaborate and work closely with ISSC on *V. vulnificus* and *V. parahaemolyticus* (e.g. continue to work on developing the *V. vulnificus* consumer education program and monitoring the implementation of the *V. parhaemolyticus* control plan).
4. FDA will continue to work with ISSC to develop State program evaluation criteria (e.g. developing a *Vibrio* retail study that could include laboratory analyses of shellfish.)
5. FDA will analyze State shellfish program data and information for ISSC.
6. FDA will conduct training courses in growing area classification, plant sanitation, HACCP and plant standardization for participants of the ISSC.
7. FDA will work with ISSC to develop new microbiological techniques and to develop and implement early warning systems for toxic algal blooms.
8. FDA will continue to work with ISSC to establish a mechanism for incorporating new lab methods into the NSSP and to develop NSSP Model Ordinance interpretations.
9. FDA will take any action that may be necessary to ensure compliance with this cooperative agreement (e.g. conducting economic study on post harvest treatment processes and developing patrol and plant inspection criteria).

V. Review Procedures and Evaluation Criteria

A. Review Procedures

The application submitted by the ISSC will undergo noncompetitive dual peer review. The application will be reviewed for scientific and technical merit by a panel of experts based upon the applicable evaluation criteria. If the application is recommended for approval, it will then be presented to the National Advisory Environmental Health Sciences Council for their concurrence.

B. Evaluation Criteria

The application will be reviewed and evaluated according to the following criteria:

1. The application clearly states an understanding of the purpose and objectives of the cooperative agreement in the overall seafood safety program and *Vibrio* research.
2. The application clearly describes the steps and a proposed schedule for planning, implementing and accomplishing the activities to be carried out under the cooperative agreement.
3. The application describes the applicant's ability to perform the responsibilities under this project by providing qualified staff. The application also demonstrates that the ISSC has the financial and other resources required for this project.
4. The application specifies the approach that the ISSC will use to maintain and to continue working with both the States and industry to ensure the exchange of information among the States, industry, and consumers on seafood safety.
5. The application specifies how the ISSC monitors the progress of the *V. vulnificus* and *V. parahaemolyticus* research projects and keeps the FDA informed of any significant advances in the understanding of or control of *V. vulnificus* and *V. parahaemolyticus*.

In addition, the agency will determine whether the estimated cost of the project is reasonable. The application shall include a detailed budget that shows: (1) Anticipated costs for personnel, travel, communications and postage, equipment, and supplies; and (2) the sources of funds to meet those needs.

VI. Reporting Requirements

FDA requires an annual Financial Status Report (FSR) (SF–269). Under FDA procedures, the original and two copies of this report must be submitted to FDA's Grants Management Office within 90 days of the budget period expiration date.

An annual project progress report is required and the contents shall be suggested by the project officer.

The annual progress report on the *V. vulnificus* and *V. parahaemolyticus* research projects shall include, but is not limited to, the following: (1) Listing and purpose of research projects funded, (2) cost of each project, (3) milestones and completion dates for each project, (4) year-to-date results/scientific findings/public health findings of each project, (5) potential *V. vulnificus* and *V. parahaemolyticus* and control measures/strategies suggested by research efforts.

A final project progress report, FSR, and invention statement must be submitted within 90 days from the expiration date of the project period as noted on the notice of grant award.

Program monitoring will be conducted on an ongoing basis. Monitoring may be in the form of telephone conversations between the project officer/grants management specialists and the principal investigator. Site visits may be made by either program or grants management staff. The results of the visits will be recorded in the official grant file and may be available to the grantee upon request.

VII. Mechanism of Support

Support for this project will be in the form of a cooperative agreement. This agreement will be subject to all policies and requirements that govern the research grant programs of the Public Health Service, including provisions of 42 CFR part 52 and 45 CFR part 74.

VIII. Submission Requirements

The original and two copies of the completed grant application form PHS 398 (Rev. 4/98) with copies of the appendices for each of the copies, should be submitted to Rosemary Springer (address above). Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Information collection requirements requested on Form PHS 398 and the instructions have been submitted by the PHS to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925–0001.

IX. Legend

Unless disclosure is required the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of the Department of Health and Human Services or by a court, data contained in the portions of this application that have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information, shall not be used or disclosed except for evaluation purposes.

Dated: December 20, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–33087 Filed 12–22–00; 10:47 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Anti-Infective Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 29, 2001, 8 a.m. to 6 p.m. and January 30, 2001, 8 a.m. to 4:30 p.m.

Location: Holiday Inn, The Ballrooms, Two Montgomery Ave., Gaithersburg, MD.

Contact Person: Thomas H. Perez, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6758, e-mail: PerezT@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12530. Please call the Information Line for up-to-date information on this meeting.

Agenda: On January 29, 2001, the committee will consider the safety and efficacy of new drug application (NDA) 21–144, Ketek™ (telithromycin) tablets, Aventis Pharmaceuticals, Inc., for the treatment of community-acquired pneumonia, acute exacerbation of chronic bronchitis, acute sinusitis, and tonsillitis/pharyngitis. On January 30, 2001, the committee will consider the safety and efficacy of NDA 50–755, Augmentin ES™ (amoxicillin/clavulanate) 90 milligrams per kilogram per day, SmithKline Beecham Pharmaceuticals, for the treatment of pediatric patients with acute otitis media due to penicillin resistant *Streptococcus pneumoniae*.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 22, 2001. Oral presentations from the public will be scheduled on January 29, 2001, between approximately 2 p.m. and 3 p.m., and on January 30, 2001, between approximately 2:45 p.m. to 3:45 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 22, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 18, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–33020 Filed 12–26–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Antiviral Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Antiviral Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 11, 2001, 8:30 a.m. to 5:30 p.m. Interested persons and organizations may submit written comments by January 8, 2001, to the Dockets Management Branch (address below).

Location: Holiday Inn, Versailles Ballroom, 8120 Wisconsin Ave., Bethesda, MD. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Contact Person: Tara P. Turner, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: TurnerT@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12531. Please call the Information Line for up-to-date information on this meeting.

Agenda: Presentations and committee discussions will focus on clinical trial design issues for patients with human immunodeficiency virus (HIV–1) infection who have limited therapeutic options (treatment sometimes referred to as "salvage" therapy). This meeting is being convened in response to the recognized difficulty in evaluating the safety and effectiveness of new antiretroviral therapeutics in heavily pretreated patients. A further goal of this meeting is to facilitate and promote the development of new therapies for patients who are most in need of new therapeutic options.

For the purpose of this meeting, we will define "salvage" therapy as regimens that follow a loss or lack of virologic response to at least two previous antiretroviral regimens that, in total, have consisted of drugs from all of the approved drug classes (protease inhibitors, nucleoside and non-nucleoside reverse transcriptase inhibitors). This population of heavily pretreated patients reflects a population for whom selection of active controls in clinical trials is a particular challenge.

The primary objectives for the committee deliberations are to discuss issues relating to the identification of appropriate control arms, possible trial designs, and study endpoints for this patient population. In order to prepare presentations and discussions for the meeting, the agency is requesting interested persons to submit in writing the following types of relevant data, information, and views:

1. Proposals for trial designs, including comments and suggestions on the following:

- The role of intensification trials, concentration controlled trials, historical-controlled trials, dose-response trials, and factorial comparisons using multiple investigational agents;
- Blinded versus open label trials;
- Study duration or duration of blinded treatment; and
- Pertinent statistical considerations for different trial design options.

2. Comments relating to patient population inclusion criteria and suggestions for baseline stratification characteristics (such as treatment history, resistance testing, CDC classification or others).

3. Proposals and comments regarding appropriate control arms and the role of resistance testing for constructing treatment regimens.

4. Comments on appropriate outcome measures such as virologic and/or

clinical endpoints for trials in heavily pretreated patients.

5. Comments on any additional considerations for clinical trials in treatment experienced pediatric patients.

These submissions should contain docket number 00N–1585, and they should be made to the Dockets Management Branch address provided previously in this document.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 4, 2001. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 4, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 18, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–32889 Filed 12–26–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Antiviral Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Antiviral Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 10, 2001, 8:30 a.m. to 5:30 p.m.

Location: Holiday Inn, Versailles Ballroom, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Tara P. Turner, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: TurnerT@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12531. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss new drug application (NDA) 21–227, Cancidas™ (caspofungin) Injection, Merck Research Laboratories, indicated for treatment of invasive aspergillosis in patients who are refractory to or intolerant of other therapies.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 4, 2001. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 4, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

FDA regrets that it was unable to publish this notice 15 days prior to the January 10, 2001, meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Antiviral Drugs Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 18, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–32890 Filed 12–26–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Arthritis Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Arthritis Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 7, 8, and 9, 2001, 8 a.m. to 5 p.m.

Location: Holiday Inn, The Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact: Kathleen R. Reedy or LaNise S. Giles, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX 301–827–6776, or e-mail reedyk@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12532. Please call the Information Line for up-to-date information on this meeting.

Agenda: On February 7, 2001, the committee will discuss new drug application (NDA) 20–998/S009, Celebrex® (celecoxib, G. D. Searle & Co.) approved for the treatment of signs and symptoms of osteoarthritis and rheumatoid arthritis in adults. The discussion is for modification of the label based on the results of the CLASS Trial, a study of the incidence of significant upper gastrointestinal effects. On February 8, 2001, the committee will discuss NDA 21–042/S007, Vioxx™ (rofecoxib, Merck Research Laboratories) approved for the treatment of signs and symptoms of osteoarthritis and the management of acute pain. The discussion is for changes in the product label related to results of the VIGOR Trial concerning clinical gastrointestinal events. On February 9, 2001, the committee will discuss NDA 20–905/S006, Arava™ (leflunomide, Aventis) approved for the treatment of active rheumatoid arthritis. The discussion is for an indication to prevent disability as evidenced by improved physical function.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 30, 2001. Oral presentations from the public will be scheduled between approximately 11 and 11:30 a. m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 30, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 18, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–32891 Filed 12–26–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee); Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee).

General Function of the Committee: To advise the Secretary and the Assistant Secretary for Health concerning its oversight of the conduct of the Ranch Hand study by the U.S. Air Force and provide scientific oversight of the Department of Veterans Affairs (VA) Army Chemical Corps Vietnam Veterans Health Study, and other studies in which the Secretary or the Assistant Secretary for Health believes involvement by the committee is desirable.

Date and Time: The meeting will be held on January 22, 2001, 1 p.m. to 4:30 p.m., January 23, 2001, 8:30 a.m. to 4:30 p.m., and January 24, 2001, 8:30 to 12 noon.

Location: Parklawn Bldg., 5600 Fishers Lane, conference room K, Rockville, MD.

Contact Person: Barbara J. Jewell, Food and Drug Administration, 5600 Fishers Lane, rm. 16–53, Rockville, MD 20857, 301–827–6696, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12560. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will provide final comments and recommendations on the scope of work for the physical examinations and final report preparation for the sixth and final round of the Air Force Health Study.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 10, 2001. Oral presentations from the public will be scheduled on January 22, 2001, between approximately 3 p.m. to 4 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 10, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 15, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–33022 Filed 12–26–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Transmissible Spongiform Encephalopathies (TSE) Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Transmissible Spongiform Encephalopathies (TSE) Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 18, 2001, 8:30 a.m. to 5:30 p.m. and January 19, 2001, 8:30 a.m. to 5:30 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave.. Bethesda, MD.

Contact Person: William Freas or Sheila D. Langford, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12392. Please call the Information Line for up-to-date information on this meeting.

Agenda: On January 18, 2001, the committee will discuss whether recent information about new variant Creutzfeldt-Jakob disease (nvCJD) in France and bovine spongiform encephalopathy in France and other European countries suggests a need to reconsider FDA policies on suitability of blood donors who lived or traveled in those countries. In the afternoon, the committee will discuss the risks of Creutzfeldt-Jakob disease (CJD) and vCJD transmission by human cells, tissues and cellular and tissue-based products intended for implantation, transplantation, infusion, or transfer that are currently or proposed to be regulated by FDA, and the possible deferral of donors who have resided in the United Kingdom. On January 19, 2001, the committee will discuss issues related to deer and elk infected with or exposed to chronic wasting disease in the United States and potential for human exposure. In the afternoon, the committee will discuss whether a history of possible exposure to various animal transmissible spongiform encephalopathy agents should be considered by FDA in determining suitability of blood donors.

Procedure: On January 18, 2001, from 8:30 a.m. to 5 p.m. and January 19, 2001, from 8:30 a.m. to 5:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 12, 2001. Oral presentations from the public will be scheduled between approximately 10:30

a.m. to 10:50 a.m., and 3 p.m. to 3:20 p.m. on January 18, 2001; and between 10:30 a.m. to 10:50 a.m., and 3 p.m. to 3:20 p.m. on January 19, 2001. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 12, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On January 18, 2001, from 5 p.m. to 5:30 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). This portion of the meeting will be closed to permit discussion of this material.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 18, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–33021 Filed 12–26–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 30, 2001, 8 a.m. to 6:30 p.m., and on January 31, 2001, 9 a.m. to 6 p.m.

Location: Holiday Inn, Versailles I, II, and III, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Nancy T. Cherry or Denise H. Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301 827 0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12391. Please call the Information Line for up-to-date information on this meeting.

Agenda: On January 30, 2001, the committee will discuss the influenza virus vaccine formulation for the 2001–2002 season. On January 31, 2001, the committee will hear a review of LYMErix™ (Lyme disease vaccine, SmithKline Beecham) safety profile including an update of post-marketing safety data.

Procedure: On January 30, 2001, from 8 a.m. to 6:30 p.m., and on January 31, 2001, from 9 a.m. to 6 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 22, 2001. Oral presentations from the public will be scheduled between approximately 2 p.m. and 2:30 p.m. on January 30, 2001. Oral presentation from the public will be heard on January 31, 2001, between approximately 1:45 p.m. and 2:15 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 22, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 18, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–33019 Filed 12–26–00; 8:45 am]

BILLING CODE 4150–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Notice of Hearing: Reconsideration of Disapproval of Rhode Island State Plan Amendment (SPA) 00–003

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on January 25, 2001; 10:00 a.m.; Twenty-second Floor; Room 2255; JFK Federal Building; Boston, Massachusetts 02203–0003, to reconsider our decision to disapprove Rhode Island (SPA) 00–003.

DATES: *Closing Date:* Requests to participate in the hearing as a party must be received by the presiding officer by January 10, 2001.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, HCFA, C1–09–13, 7500 Security Boulevard, Baltimore, Maryland 21244, Telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Rhode Island's State Plan Amendment (SPA) 00–003. Rhode Island submitted SPA 00–003 on March 29, 2000. This amendment proposed to include under the State plan disproportionate share (DSH) payments to non-government hospitals to cover the costs of providing inpatient hospital services to inmates in the custody of the Department of Corrections (DOC) or the Department of Children, Youth and Families (DCYF). As explained below, HCFA could not approve Rhode Island's SPA 00–003.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The issue in Rhode Island SPA 00–003 is whether the payments at issue are consistent with the statutory requirements for DSH payments at section 1923 of the Act. The payments are for specific services furnished to individuals not eligible for Medicaid, and are not generally available for the costs to "serve a disproportionate share

of low income patients with special needs." Moreover, since inmates in the custody of the DOC or the DCYF, have a source of third party coverage, because of the legal obligation of those entities to furnish food, housing and medical care to wards of the State, DSH payments for those services would be contrary to the applicable hospital-specific limits. HCFA contends that these inmates are neither eligible for Medicaid nor are they uninsured.

Section 1923 of the Act establishes Federal requirements for DSH payments to qualifying hospitals. DSH payments may be reasonably related to the costs, volume or proportion of services provided to patients eligible for medical assistance under a State plan or to low-income patients. Unlike other Medicaid payments, DSH payments are not payments for specific services, but are made to recognize that DSH facilities "serve a disproportionate share of low income patients with special needs." The payments described in this State plan are payments for specific services to specified inmates in the custody of the DOC or DCYF, rather than payments available for the overall costs of serving a disproportionate share of low-income patients. It is important to note that, while States may use DSH payments generally to assist facilities that have high levels of uncompensated care, the DSH provisions do not authorize payments for specific services to non-Medicaid eligible individuals.

Furthermore, under section 1923(g) of the Act there is a hospital-specific limit on DSH payments under Medicaid. Such payments cannot exceed the hospital's uncompensated costs of furnishing hospital services to individuals who either are eligible for medical assistance under the State plan or have no health insurance or other source of third party coverage for services provided during the year. Individuals in the custody of the DOC and the DCYF are wards of the State. As such, the State is obligated to cover their basic economic needs (food, housing, and medical care) because failure to do so would be in violation of the Eighth amendment of the Constitution. Because State obligations outside of the Medicaid program provide these individuals a source of third party coverage, the individuals are neither eligible for medical assistance nor are they uninsured. Therefore, the State cannot make DSH payments to cover the costs of their care.

Therefore, based on the above, and after consultation with the Secretary as required under 42 CFR 430.15(c)(2), HCFA disapproved Rhode Island SPA 00–003.

The notice to Rhode Island announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Christine C. Ferguson
Director
Department of Human Services
600 New London Avenue
Cranston, Rhode Island 02920

Dear Ms. Ferguson: I am responding to your request for reconsideration of the decision to disapprove Rhode Island State Plan Amendment (SPA) 00–003.

The issue in Rhode Island SPA 00–003 is whether the payments at issue are consistent with the statutory requirements for disproportionate share hospital (DSH) payments at section 1923 of the Social Security Act (the Act). The payments are for specific services furnished to individuals not eligible for Medicaid, and are not generally available for the costs to "serve a disproportionate share of low income patients with special needs." Moreover, since inmates in the custody of the Department of Corrections (DOC) or the Department of Children and Youth (DCYF), have a source of third party coverage, because of the legal obligation of those entities to furnish food, housing and medical care to wards of the State, DSH payments for those services would be contrary to the applicable hospital-specific limits. HCFA contends that these inmates are neither eligible for Medicaid nor are they uninsured.

Section 1923 of the Act establishes Federal requirements for DSH payments to qualifying hospitals. DSH payments may be reasonably related to the costs, volume or proportion of services provided to patients eligible for medical assistance under a State plan or to low-income patients. Unlike other Medicaid payments, DSH payments are not payments for specific services, but are made to recognize that DSH facilities "serve a disproportionate share of low income patients with special needs." The payments described in this State plan are payments for specific services to specified inmates in the custody of the DOC or DCYF, rather than payments available for the overall costs of serving a disproportionate share of low-income patients. It is important to note that, while States may use DSH payments generally to assist facilities that have high levels of uncompensated care, the DSH provisions do not authorize payments for specific services to non-Medicaid eligible individuals.

Furthermore, under section 1923(g) of the Act there is a hospital-specific limit on DSH payments under Medicaid. Such payments cannot exceed the hospital's uncompensated costs of furnishing hospital services to individuals who either are eligible for medical assistance under the State plan or have no health insurance or other source of third party coverage for services provided during the year. Individuals in the custody of the DOC and the DCYF are wards of the State. As such, the State is obligated to cover their basic economic needs (food, housing, and medical care) because failure to do so would be in violation of the Eighth amendment of the Constitution. Because State obligations outside of the Medicaid program provide these individuals a source of third party coverage, the individuals are neither eligible for medical assistance nor are they uninsured. Therefore, the State cannot make DSH payments to cover the costs of their care.

Therefore, based on the above, and after consultation with the Secretary as required under 42 CFR430.15(c)(2), HCFA disapproved Rhode Island SPA 00–003.

I am scheduling a hearing on your request for reconsideration to be held on January 25, 2001, Twenty-second Floor: Room 2255; JFK Federal Building; Boston, Massachusetts 02203–0003. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786–2055.

Sincerely,

Robert A. Berenson, M.D.
Acting Deputy Administrator.

Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR Section 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: December 20, 2000.

Robert A. Berenson,

Acting Deputy Administrator, Health Care Financing Administration.

[FR Doc. 00–32922 Filed 12–26–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–9006–N]

Medicare and Medicaid Programs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of HHS regulatory plan and unified agenda.

SUMMARY: This document corrects a technical error that appeared in the November 30, 2000 Regulatory Plan and the November 30, 2000 Unified Agenda. The Regulatory Plan included HHS–HCFA sequence number 57-Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships—Phase II (HCFA–1810–FC) that concerns the physician referral provisions under section 1877 of the

Social Security Act. This entry should not have been included in the Regulatory Plan because it was premature and inaccurate. We are withdrawing this item from the Regulatory Plan and also from the Unified Agenda, which cross-referenced the Regulatory Plan.

EFFECTIVE DATE: These corrections are effective December 27, 2000.

FOR FURTHER INFORMATION CONTACT: Joanne Sinsheimer, (410) 786–4620.

SUPPLEMENTARY INFORMATION: This notice withdraws HHS–HCFA Sequence Number 57-Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships—Phase II (HCFA–1810–FC) from the Regulatory Plan that was published on November 30, 2000 (65 FR 73383) and from the Unified Agenda, also published on November 30, 2000 (65 FR 73838).

We are withdrawing this entry from the Regulatory Plan because the language was premature, inaccurate and not meant for publication in the **Federal Register.** Therefore, we are withdrawing HHS–HCFA sequence number 57 from the Regulatory Plan published on November 30, 2000 at 65 FR 73383 and sequence number 1260 from the Unified Agenda published on November 30, 2000 at 65 FR 73838, that cross-referenced this Regulatory Plan entry.

Authority: Sections 1871 and 1102 of the Social Security Act (42 U.S.C. 1395hh and 1302).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: December 21, 2000.

Robert A. Berenson,

Acting Deputy Administrator, Health Care Financing Administration.

[FR Doc. 00–32994 Filed 12–22–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Center for Substance Abuse Treatment (CSAT) National Advisory Council to be held in January 2001. A portion of the meeting will be open and include discussion of the Center's policy issues and current administrative, legislative, and program developments. The Council will hear feature presentations by SAMHSA Acting Administrator Joseph H. Autry, III, M.D. and CSAT Director H. Westley Clark, M.D., J.D., M.P.H., CAS, FASAM, Status reports on Buprenorphine, OPIOD Accreditation and CSAT's National Treatment Plan will also be presented. Other presentations include: Budget and Decision Process for Discretionary Funds; Methamphetamine; and an Overview of CSAT's Office of Evaluation, Scientific Analysis and Synthesis (including National Treatment Outcomes and Monitoring Systems, Knowledge Application Program (KAP), Persistent Effects of Treatment Study Project (PETS), National Evaluation Data Services (NEDS) Update, State Treatment Needs Assessment, Administrative Treatment Data Webs).

If anyone needs special accommodations for persons with disabilities, please notify the Contact listed below.

The meeting will also include the review, discussion, and evaluation of grant applications. Therefore a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(3), (4), and (6) and 5 U.S.C. App. 2, 10(d).

A summary of the meeting and roster of council members may be obtained from: Mrs. Marjorie Cashion, CSAT, National Advisory Council, Rockwall II Building, Suite 618, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–8923.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Center for Substance Abuse Treatment, National Advisory Council.

Meeting Date:

January 8, 2001—8:30 a.m.–5 p.m.
January 9, 2001—9 a.m.–1 p.m.

Place: NIH Neuroscience Conference Center, 6001 Executive Boulevard, Rockville, Maryland 20852.

Type:

Closed: January 8, 2001—8:30 a.m.–8:50 a.m.

Open: January 8, 2001—8:50 a.m.–5 p.m.; January 9, 2001—9 a.m.–1 p.m.

Contact: Marjorie M. Cashion, Executive Secretary, Telephone: (301) 443–8923, and FAX: (301) 480–6077.

Dated: December 20, 2000.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 00–32925 Filed 12–26–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4567-N-03]

Notice of Proposed Information Collection: Comment Request; Schedule of Pooled Mortgages

AGENCY: Office of the President of the Government National Mortgage Association (Ginnie Mae), 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: February 26, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Sonya Suarez, Government National Mortgage Association, Office of Policy, Planning and Risk Management, Department of Housing & Urban Development, 451–7th Street, SW., Room 6226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sonya Suarez, Ginnie Mae, (202) 708–2772 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department 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).

Through this Notice, the Department 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 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: Schedule of Pooled Mortgages.

OMB Control Number, if applicable: 2503–0010.

Description of the need for the information and proposed use: This form identifies the mortgages that collateralize the designed MBS pools or loan packages. It also provides a certification from the document custodian that certain required mortgage documents are being held by the document custodian on behalf of Ginnie Mae.

Agency form numbers, if applicable: HUD Form 11706.

Members of affected public: For-profit business (mortgage industry trade associations, securities companies, accounting firms, law firms, service providers, etc.)

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Estimation of total number of hours needed to prepare the information collection is based on the number of respondents multiplied by the frequency of responses:

(1) 650 respondents × 49 responses = 31,540 total annual responses, and Total annual responses multiplied by the amount of time it takes to complete the form.

(2) 31,540 × .25 hours/response = 7,885 annual burden hours.

Status of the proposed information collection: This is a reinstatement, with change, of a previously approved collection for which approval has expired.

Authority: Sec. 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 18, 2000.

George S. Anderson,

Executive Vice President, Ginnie Mae.

[FR Doc. 00–32907 Filed 12–26–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Establishment of Hanford Reach National Monument Federal Planning Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Establishment.

SUMMARY: The Secretary of the Interior, after consultation with the Department of Energy (DOE) and General Services Administration, has established the Hanford Reach National Monument Federal Planning Advisory Committee (Committee). The Committee will provide recommendations to the Fish and Wildlife Service (Service) and DOE on the preparation of a comprehensive conservation plan and associated environmental impact statement (CCP/EIS) for the Hanford Reach National Monument (Monument). Additionally, the Committee will help to ensure that during development of the CCP/EIS, we consider the land-use visions and perspectives of affected stakeholders within the framework of the directives of Presidential Proclamation 7319, June 9, 2000; the DOE Hanford Site; and the policy requirements of the National Wildlife Refuge System.

FOR FURTHER INFORMATION CONTACT: Greg Hughes, Project Leader, Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge, 3250 Port of Benton Boulevard, Richland, WA 99352. Telephone: (509) 371–1801.

SUPPLEMENTARY INFORMATION: We are publishing this notice in accordance with the requirements of the Federal Advisory Committee Act (5 U.S.C. App.) (FACA). The Secretary of the Interior certifies that he has determined that the formation of the Committee is necessary and is in the public interest.

The Committee will conduct its operations in accordance with the provisions of FACA. The Committee will report to the Director of the Service or the Director's designee and will function solely as an advisory body. The Committee's charter directs the Committee to provide advice to the Service and DOE regarding the preparation of the Monument CCP/EIS, including the identification of planning issues and development of vision, goals, objectives, priorities, and management alternatives.

To achieve the Committee's goals, the Secretary will appoint members who can effectively represent the varied interests associated with the Monument. Members will represent State, local, and tribal governments; economic interests; environmental organizations; scientific and academic interests; outdoor recreation interests; and the public-at-large. Each member must be qualified on the basis of knowledge and understanding of the lands and resources of the Monument; past experience working with government planning processes; ability to actively participate in diverse team settings; demonstrated skill in working toward mutually beneficial solutions to complex issues; and commitment to attending Committee meetings.

The Committee will meet at such intervals as are necessary to carry out its functions. We expect that the Committee will meet at least six times per year. The Service will provide necessary support services to the Committee. All meetings of the Committee and any subcommittee established by the Committee will be open to the public. The public will have the opportunity to provide input at all meetings.

The Committee will continue for the length of time required to complete the Monument CCP/EIS (estimated to be approximately 2 years).

Fifteen days after publication of this notice in the **Federal Register**, a copy of the Committee's charter will be filed with the Committee Management Secretariat, General Services, Administration; Committee on Environment and Public Works, United States Senate; Committee on Resources, United States House of Representatives; and the Library of Congress.

The Certification for establishment is published below.

Certification

I hereby certify that the Hanford Reach National Monument Federal Planning Advisory Committee is necessary and is in the public interest in connection with the performance of duties imposed on the Department of the Interior by Presidential Proclamation 7319 of June 9, 2000, Establishment of the Hanford Reach National Monument. The Committee will assist the Fish and Wildlife Service and the Department of Energy by providing advice on the preparation of a Comprehensive Conservation Plan and associated Environmental Impact Statement for the Monument.

Dated: December 19, 2000.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 00–32940 Filed 12–26–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit: Correction

AGENCY: Fish and Wildlife Service.

ACTION: Notice: correction.

SUMMARY: We published a notice on November 28, 2000. (65 FR 70931) identifying an application request as PRT–033790. The correct application request is identified as PRT–036053.

DATES: We will accept comments on this notice on or before January 18, 2000.

ADDRESSES: Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: Charlie Chandler (800) 358–2104. Division of Management Authority. U.S. Fish and Wildlife Service.

SUPPLEMENTARY INFORMATION: On November 28, 2000, we published a notice requesting comments on the receipt of an application for a permit from White Oak Conservation Center, Yulee, FL, to import 2 captive bred cheetahs (*Acinonyx jubatus*) from Wassenaar Wildlife Breeding Centre, the Netherlands, for the purpose of captive propagation. The permit application mistakenly identified the application request as PRT–033790. The correct application request should be identified as PRT–036053.

Dated: December 20, 2000.

Anna Barry,

Branch of Permits, Division of Management Authority.

[FR Doc. 00–32937 Filed 12–26–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice: Correction.

SUMMARY: We published a notice on October 26, 2000, (65 FR 64230) identifying the population where the polar bear was harvested as Cambridge Bay in PRT–034958. The polar bear was harvested from M'Clintock Channel population.

DATES: We will accept comments on this notice on or before January 18, 2000.

ADDRESSES: Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: Charlie Chandler (800) 358–2104, Division of Management Authority, U.S. Fish and Wildlife Service.

SUPPLEMENTARY INFORMATION: On October 26, 2000, we published a notice requesting comment on the receipt of an application for a permit from Phil Mancuso to import a polar bear (*Ursus maritimus*) sport-hunted from the Cambridge Bay population in Canada for personal use. The correct application request is for a bear harvested from the M'Clintock Channel population.

Dated: December 20, 2000.

Anna Barry,

Branch of Permits, Division of Management Authority.

[FR Doc. 00–32938 Filed 12–26–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Approval

The following applicant has applied for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

Applicant: Mr. Jerry Jennings, Fallbrook, California, on behalf of the Toucan Preservation Center (CB006). The applicant wishes to amend approved cooperative breeding program CB006 to include Red-billed toucan (*Ramphastos tucanus tucanus*). The Toucan Preservation Center maintains responsibility for oversight of this program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: December 20, 2000.

Andrea Gaski,

Chief, Branch of CITES Operations, Division of Management Authority.

[FR Doc. 00–32939 Filed 12–26–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–660–00–7123–HA]

Restrictions on Use of Public Lands

AGENCY: Bureau of Land Management, Palm Springs-South Coast Field Office, Desert District, California, Department of the Interior.

ACTION: Notice-temporary closure of public lands to motorized vehicles.

SUMMARY: In compliance with title 43 Code of Federal Regulations (CFR), subpart 8341.2(a), notice is hereby given that the Bureau of Land Management (BLM) prohibits persons from operating motor vehicles on public lands within the Windy Point areas, Riverside County. The public lands hereby closed to motorized vehicles include all such lands within ¼ E Section 14, Section 22, Section 23, and W ½ / NE ¼ Section 24, Township 3S, Range 3E. This closure shall be in effect year-round from January 31, 2001 until completion of the Coachella Valley Multiple Species Habitat and Natural Communities Conservation Management Plan, which addresses all aspects of the habitat use, including any restrictions to motorized vehicles.

SUPPLEMENTARY INFORMATION: On September 25, 1980, the U.S. Department of the Interior Fish and Wildlife Service (USFWS) listed the Coachella Valley Fringe-toed Lizard (CVFTL), as "threatened" under the authority of the Endangered Species Act (ESA) of 1973, as amended. The State of California Fish and Game Commission designated the CVFTL as "endangered". These listings were prompted by the USFWS, California Department of Fish and Game, and CVFTL biologists/researchers' concerns that the lizards' historical range was being rapidly reduced by agricultural and urban development, along with the presence of off-highway vehicles.

The CVFTL is specially adapted to live in an environment of wind blown (aeolian) sand. The lizard's body shape, such as wedge-shaped nose and fringed toes, allow it to run easily over the sand and into loose surface to evade predators or the heat of the desert surface. In addition, insects and some plant material in the blowsand

ecosystem provide food for the CVFTL. As human population in the Coachella Valley grows, the protection of windblown sand dunes become increasingly important for CVFTL habitat and survival.

The CVMV was listed as endangered by the USFWS in October 1998 under the authority of the ESA of 1973, as amended. The CVMV has not been listed by the State of California under its Endangered Species Act.

The CVMV occurs primarily on areas of loose windblown sand in the Coachella Valley. It is an annual or short-lived perennial plant. The plant is highly ephemeral in nature with growth highly dependent on rainfall patterns. Much of the plant's original habitat has been lost to agricultural, residential, and business development. Remaining habitat is threatened by these impacts as well as by OHVs, exotic plant invasion and wind farms.

The CVFTL is intimately associated with its habitat, virtually any activity which disturbs or destroys habitat will almost certainly destroy individual lizards. A similar relationship exists for the CVMV and the Flat-Tailed Horned Lizard (FTHL). In addition, other rare animals, such as the Palm Springs pocket mouse, Coachella Valley/Palm Springs ground squirrel, Coachella Valley Jerusalem cricket and Coachella giant sand treader cricket, which have adapted to living in actively moving sand would also be protected if this closure were implemented.

It was determined by the BLM that the venue for addressing the management of OHVs in the Windy Point area is the CVMSHCP, which is currently in development.

Any person who fails to comply with this order may be subject to the penalties provided in 43 CFR 8360.0–7.

FOR ADDITIONAL INFORMATION CONTACT: Anna Atkinson, BLM, Palm Springs-South Coast Field Office, P.O. Box 1260, North Palm Springs, CA 92258, telephone 760–251–4824.

Gavin Wright, BLM, Palm Springs-South Coast Field Office, P.O. Box 1260, North Palm Springs, CA 92258, telephone 760–251–4855.

Dated: November 28, 2000.

James G. Kenna,

Field Manager.

[FR Doc. 00–33016 Filed 12–26–00; 8:45 am]

BILLING CODE 4310–40–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Docket No. UT–912–01–1150–AE–24–1A]

Notice of Utah Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Utah Resource Advisory Council meeting.

SUMMARY: The Bureau of Land Management's Utah Statewide Resource Advisory Council will be having a one-day Orientation to BLM meeting on February 6, 2001.

The meeting is being held at the Bureau of Land Management's Utah State Office, 324 South State Street, Salt Lake City, from 8:00 until 4:00. A public comment period is scheduled from 12:30–1:00, where members of the public may address the council. All meetings are open to the public, however, transportation, lodging, and meals are the responsibility of the participating public.

FOR FURTHER INFORMATION CONTACT: Contact Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, Utah, 84111: phone (801) 539–4195.

Dated: December 19, 2000.

Sally Wisely,

State Director.

[FR Doc. 00–33015 Filed 12–26–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 16, 2000. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by January 11, 2001.

Carol D. Shull,

Keeper of the National Register.

Arkansas

Faulkner County:
Robinson, Asa P., Historic District, Roughly bounded by Cross, Prince, Faulkner, and Watkins Sts., and Robinson Ave., Conway, 00001645

California

Riverside County:
San Timoteo Canyon Schoolhouse, 31985 San Timoteo Canyon Rd., Redlands, 00001646

Colorado

Denver County:
Chamber of Commerce Building, 1726 Champa St., Denver, 00001647
Fremont County:
South Canon High School, 1020 Park Ave., Canon City, 00001648

Connecticut

Tolland County:
Farwell Barn, Horsebarn Hill Rd., Mansfield, 00001649

Florida

Sarasota County:
Harding Circle Historic District, Roughly, John Ringling Blvd., St. Armands Cir., and Blvd. of Presidents, Sarasota, 00001650

Iowa

Black Hawk County:
Bennington No. 4, Jct. of Bennington and Sage Rds., Waterloo, 00001651
Clay County:
Logan Center School No.5, Jct. of 420th St. and 310th Ave., Dickens, 00001652
Johnson County:
Stone Academy, IA 1, 2 mi. N. of Solon, Solon, 00001653
Jones County:
Antioch School, IA 64, 4 mi. E. of Anamosa, Anamosa, 00001654
Monona County:
Mann School No. 2, Oak Ave, 3.5 mi. NW of Preparation Canyon State Park entrance, Moorhead, 00001655

Massachusetts

Barnstable County:
Fort Hill Rural Historic District, Fort Hill Rd, Cape Cod National Seashore, Eastham, 00001656
Hampshire County:
Lockville Historic District, College Hwy., Southampton, 00001657

Missouri

Adair County:
Smith, Orie J., Black and White Stock Farm Historic District, .5 mi. SE of Jct. of MO P and Co. Rd. 129B, Kirksville, 00001658
Linn County:
Linn County Jail and Sheriff's Residence, 102 N. Main St., Linneus, 00001659

Nebraska

Madison County:
Skala House, Town Park, Battle Creek, 00001660

New York

Otsego County:
West Burlington Memorial Church, NY 80, West Burlington, 00001661

Ohio

Cuyahoga County:
Federal Knitting Mills Building, 2860–2894 Detroit Ave., Cleveland, 00001662

Lorain County:
Elyria Downtown—West Avenue Historic District, (Elyria MRA), Roughly bounded by Railroad, East Ave, 5th St. and West Ave., Elyria, 00001663

Texas

Fayette County:
Fayette County Courthouse Square Historic District, Roughly bounded by Main, Lafayette, Franklin, Colorado, Jefferson, Washington, and Crockett Sts., La Grange, 00001664

Harris County:
Union Transfer and Storage Building, 1113 Vine St., Houston, 00001665

Virginia

Albemarle County:
Mount Ida, VA 795, Scottsville, 00001666

Richmond Independent city:
West Broad Street Commercial Historic District, 1300–1600 West Broad St., Richmond, 00001667

Wisconsin

Eau Claire County:
Gikling, Gilbert, House, 421 Talmadge St., Eau Claire, 00001668

Eau Claire County:
Oatman Filling Station, 102 Ferry St., Eau Claire, 00001669
Schwahn, William and Tilla, 447 McKinley Ave., Eau Claire, 00001670
Werner, Dr. Nels, House, 443 Roosevelt Ave., Eau Claire, 00001671

Wyoming

Niobrara County:
C and H Refinery Historic District, 402 W. 8th St., Lusk, 00001672

[FR Doc. 00–32921 Filed 12–26–00; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Office of the State Archaeologist, University of Iowa, Iowa City, IA

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Office of the State Archaeologist, University of Iowa, Iowa City, IA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Office of the State Archaeologist, University of Iowa, professional staff in consultation with the California Native American Heritage Commission and representatives of the Santa Rosa Indian Community of the Santa Rosa Rancheria, California; the Table Mountain Rancheria of California; the Tule River Indian Tribe of the Tule River Reservation, California; the Big Sandy Rancheria of Mono Indians of California; the Cold Springs Rancheria of Mono Indians of California; the Northfork Rancheria of Mono Indians of California; the Ione Band of Miwok Indians of California; the Chicken Ranch Rancheria of Me-Wuk Indians of California; the Jackson Rancheria of Me-Wuk Indians of California; the Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; and the Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California.

At an unknown date, human remains representing four individuals were removed from unknown locations in the San Joaquin Valley, CA, by John Morrie, of Fort Madison, IA. In 1994, the Morrie family transferred these human remains to the Office of the State Archaeologist Burials Program. No known individuals were identified. No associated funerary objects are present.

Morphological evidence indicates that these individuals are Native American based on dental wear and cranial features. The limited accession information indicates that these human remains were collected within the San Joaquin Valley, CA, and are identified as late precontact to early historic Yokuts Indians. Yokuts-speaking peoples occupied the entire San Joaquin Valley at the time of European contact, and had been living in the valley for a long time. Archeological, linguistic, ethnographic, and oral historical evidence suggests that the Yokuts and their ancestors inhabited the region since 500 B.C.

Based on the above-mentioned information, officials of Office of the State Archaeologist, University of Iowa, have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of four individuals of Native American ancestry. Also, officials of the Office of the State Archaeologist, University of Iowa, have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Santa Rosa Indian Community of the Santa Rosa Rancheria, California; the Table Mountain Rancheria of California; the Tule River Indian Tribe of the Tule River Reservation, California; the Big Sandy Rancheria of Mono Indians of California; the Cold Springs Rancheria of Mono Indians of California; the Northfork Rancheria of Mono Indians of California; the Ione Band of Miwok Indians of California; the Chicken Ranch Rancheria of Me-Wuk Indians of California; the Jackson Rancheria of Me-Wuk Indians of California; the Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; and the Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California.

This notice has been sent to officials of the California Native American Heritage Commission; the Santa Rosa Indian Community of the Santa Rosa Rancheria, California; the Table Mountain Rancheria of California; the Tule River Indian Tribe of the Tule River Reservation, California; the Big Sandy Rancheria of Mono Indians of California; the Cold Springs Rancheria of Mono Indians of California; the Northfork Rancheria of Mono Indians of California; the Ione Band of Miwok Indians of California; the Chicken Ranch Rancheria of Me-Wuk Indians of California; the Jackson Rancheria of Me-Wuk Indians of California; the Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract),

California; and the Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Shirley Schermer, Burials Program Director, Office of the State Archaeologist, 700 Clinton Street Building, University of Iowa, Iowa City, IA 52242, telephone (319) 384-0740, before January 26, 2001. Repatriation of the human remains to the Santa Rosa Indian Community of the Santa Rosa Rancheria, California; the Table Mountain Rancheria of California; the Tule River Indian Tribe of the Tule River Reservation, California; the Big Sandy Rancheria of Mono Indians of California; the Cold Springs Rancheria of Mono Indians of California; the Northfork Rancheria of Mono Indians of California; the Ione Band of Miwok Indians of California; the Chicken Ranch Rancheria of Me-Wuk Indians of California; the Jackson Rancheria of Me-Wuk Indians of California; the Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; and the Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California, may begin after that date if no additional claimants come forward.

Dated: November 20, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–32917 Filed 12–26–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of the Southwestern Region, U.S. Forest Service, Department of Agriculture, Albuquerque, NM, and in the Possession of the Office of the State Archaeologist, University of Iowa, Iowa City, IA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the control of the Southwestern Region, U.S. Forest Service, Department of Agriculture, Albuquerque, NM, and in the possession of the Office of the State Archaeologist, University of Iowa, Iowa City, IA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Office of the State Archaeologist, University of Iowa, professional staff in consultation with representatives of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; the Gila River Indian Community of the Gila River Indian Reservation, Arizona; the Hopi Tribe of Arizona; the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; the Tohono O'odham Nation of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico.

At an unknown date, human remains representing one individual were removed by an unknown person from a grave in the Sierra Ancha Experimental Forest, Tonto National Forest, Gila County, AZ. In 1994, the remains were discovered in the collections of the Iowa State University, Ames, IA, and transferred to the Office of the State Archaeologist Burials Program. No known individual was identified. No associated funerary objects are present.

Limited accession information indicates that these human remains were recovered from a grave within the Sierra Ancha Experimental Forest, Tonto National Forest, AZ. Morphological cranial features and craniometric evidence indicate that this individual is Native American. Archeological and settlement sites within the Sierra Ancha Experimental Forest have been identified as Anasazi, Mogollon, Hohokam, and historically Hopi, Zuni, and Pima. The Anasazi, Mogollon, and Hohokam sites in this area are considered ancestral to the Ak Chin Indian Community, the Gila River Indian Community, the Hopi Tribe, the Salt River Pima-Maricopa Indian Community, the Tohono O'odham Nation, and the Zuni Tribe, based on archeological evidence indicating cultural continuity since early precontact times, historical documents, and oral history.

Based on the above-mentioned information, officials of the Southwestern Region, U.S. Forest Service, Department of Agriculture, have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Also, officials of the Southwestern Region, U.S. Forest Service, Department of Agriculture, have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; the Gila River Indian Community of the Gila River Indian Reservation, Arizona; the Hopi Tribe of Arizona; the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; the Tohono O'odham Nation of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico.

This notice has been sent to officials of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; the Gila River Indian Community of the Gila River Indian Reservation, Arizona; the Hopi Tribe of Arizona; the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; the Tohono O'odham Nation of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Frank E. Wozniak, NAGPRA Coordinator, Southwestern Region, USDA Forest Service, 517 Gold Avenue SW., Albuquerque, NM 87102, telephone (505) 842–3238, before January 26, 2001. Repatriation of the human remains to the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; the Gila River Indian Community of the Gila River Indian Reservation, Arizona; the Hopi Tribe of Arizona; the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; the Tohono O'odham Nation of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico may begin after that date if no additional claimants come forward.

Dated: December 11, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–32919 Filed 12–26–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Office of the State Archaeologist, University of Iowa, Iowa City, IA

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Office of the State Archaeologist, University of Iowa, Iowa City, IA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Office of the State Archaeologist, University of Iowa professional staff in consultation with representatives of the Hopi Tribe of Arizona; the Pueblo of Acoma, New Mexico; the Pueblo of Cochiti, New Mexico; the Pueblo of Jemez, New Mexico; the Pueblo of Isleta, New Mexico; the Pueblo of Laguna, New Mexico; the Pueblo of Nambe, New Mexico; the Pueblo of Picuris, New Mexico; the Pueblo of Pojoaque, New Mexico; the Pueblo of San Felipe, New Mexico; the Pueblo of San Juan, New Mexico; the Pueblo of San Ildefonso, New Mexico; the Pueblo of Sandia, New Mexico; the Pueblo of Santa Ana, New Mexico; the Pueblo of Santa Clara, New Mexico; the Pueblo of Santo Domingo, New Mexico; the Pueblo of Taos, New Mexico; the Pueblo of Tesuque, New Mexico; the Pueblo of Zia, New Mexico; and the Zuni Tribe of the Zuni Reservation, New Mexico.

At an unknown date, human remains representing one individual were removed from an unknown site near Gran Quivira, Torrance County, NM, by an unknown local rancher. At an unknown date, these remains were transferred to John Morrie, Ft. Madison, IA. In 1994, the Morrie family transferred these remains to the Iowa Office of the State Archaeologist Burials Program. No known individual was identified. No associated funerary objects are present.

According to available documentation, these remains were excavated from a burial located 14 miles from Grand Quivira National Monument, and the remains are those of a "Piro Pueblo" person who lived approximately 400–700 years ago. The remains were buried sitting up. The region around Gran Quivira, known as the Salinas District, was the easternmost area of ancient pueblo settlements. From archeological evidence, Puebloan peoples built numerous large settlements beginning around A.D. 1200 and continuing up to Spanish colonial times. When the Spaniards conquered the region in the 17th century, they identified several groups among the pueblos, whose members spoke Piro, Tompiro, and Southern Tiwa languages. During colonial times, the villages were abandoned and the inhabitants were resettled at Isleta del Sur, today the Ysleta Del Sur Pueblo of Texas, near El Paso, TX, and among other Rio Grande pueblos in New Mexico.

At an unknown date, human remains representing two individuals were removed from an unknown site on a ranch near Cuba, Sandoval County, NM, by an unknown person. At an unknown date, these remains were transferred to John Morrie, Ft. Madison, IA. In 1994, the Morrie family transferred these remains to the Iowa Office of the State Archaeologist Burials Program. No known individuals were identified. No associated funerary objects are present.

Information provided by Mr. Morrie states that these remains were found in isolated ruins, either pithouses or pueblos, and were buried sitting up. Pithouses appear during the Basketmaker II period (200 B.C.–A.D. 400), and above-ground structures begin to appear in Basketmaker III–Pueblo I (A.D. 400–900). Isolated pueblos are common during Pueblo II (A.D. 900–1100), and are generally replaced by large aggregated pueblos during Pueblo III (A.D. 1100–1300). The available evidence suggests that these remains date to the late Basketmaker or early Pueblo periods. Archeological evidence, including architecture, social organization, material culture, and ceremonial practices, combined with physical anthropological evidence and oral tradition indicate that both the Basketmaker and Pueblo cultures, collectively known as Anasazi, are ancestral to the present-day Pueblo peoples of the southwestern United States.

In 1943, human remains representing one individual were removed from an unknown site near Truth or Consequences, Sierra County, NM, by Powell Eugene Bering. At an unknown date, these remains were transferred to John Morrie, Ft. Madison, IA. In 1994, the Morrie family transferred these remains to the Iowa Office of the State Archaeologist Burials Program. No known individual was identified. No associated funerary objects are present.

These remains have been identified as a person of the Mimbres tradition, based on a funerary bowl that is no longer associated with the remains. The Mimbres tradition, which flourished in southeastern New Mexico circa A.D. 1000–1150, is noted for its distinctive black-on-white ceramic styles. Mimbres was a local variant of the Mogollon culture, which was found across a broad area of Arizona and New Mexico. Archeological evidence, including ceramics, art styles, and architecture, indicates that the people of the late Mogollon/Mimbres tradition were a part of the Pueblo tradition.

During the 1930's, human remains representing one individual were removed from the area of Mesa Verde, Montezuma County, CO, by an unknown individual. In 1982, these remains were donated to Iowa State University, Ames, IA, and in 1994 were transferred to the Iowa Office of the State Archaeologist Burials Program. No known individual was identified. No associated funerary objects are present.

The Mesa Verde area was the center of an important cultural development known as the San Juan Anasazi, between A.D. 700 and A.D. 1300, archeologically classified as Pueblo I–III periods, during which people established aggregated agricultural villages with distinctive architecture, ceramics, and ceremonial practices. The skull in the Office of the State Archaeologist's possession displays marked flattening of the back of the skull (posterior parietals) related to cradleboard use, a notable feature of the Pueblo period cultural practices in the Mesa Verde region. Oral history, supported by the archeological evidence for continuity of architecture, social organization, ceremonial practices, and material culture, demonstrates that the Anasazi of the Mesa Verde region were ancestors of the modern Pueblo peoples.

Based on the above-mentioned information, officials of the Office of the State Archaeologist, University of Iowa, have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of five individuals of Native American ancestry. Also, officials of the

Office of the State Archaeologist, University of Iowa, have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Hopi Tribe of Arizona; the Pueblo of Acoma, New Mexico; the Pueblo of Cochiti, New Mexico; the Pueblo of Jemez, New Mexico; the Pueblo of Isleta, New Mexico; the Pueblo of Laguna, New Mexico; the Pueblo of Nambe, New Mexico; the Pueblo of Picuris, New Mexico; the Pueblo of Pojoaque, New Mexico; the Pueblo of San Felipe, New Mexico; the Pueblo of San Juan, New Mexico; the Pueblo of San Ildefonso, New Mexico; the Pueblo of Sandia, New Mexico; the Pueblo of Santa Ana, New Mexico; the Pueblo of Santa Clara, New Mexico; the Pueblo of Santo Domingo, New Mexico; the Pueblo of Taos, New Mexico; the Pueblo of Tesuque, New Mexico; the Pueblo of Zia, New Mexico; the Ysleta del Sur Pueblo of Texas; and the Zuni Tribe of the Zuni Reservation, New Mexico.

This notice has been sent to officials of the Hopi Tribe of Arizona; the Pueblo of Acoma, New Mexico; the Pueblo of Cochiti, New Mexico; the Pueblo of Jemez, New Mexico; the Pueblo of Isleta, New Mexico; the Pueblo of Laguna, New Mexico; the Pueblo of Nambe, New Mexico; the Pueblo of Picuris, New Mexico; the Pueblo of Pojoaque, New Mexico; the Pueblo of San Felipe, New Mexico; the Pueblo of San Juan, New Mexico; the Pueblo of San Ildefonso, New Mexico; the Pueblo of Sandia, New Mexico; the Pueblo of Santa Ana, New Mexico; the Pueblo of Santa Clara, New Mexico; the Pueblo of Santo Domingo, New Mexico; the Pueblo of Taos, New Mexico; the Pueblo of Tesuque, New Mexico; the Pueblo of Zia, New Mexico; the Ysleta del Sur Pueblo of Texas; and the Zuni Tribe of the Zuni Reservation, New Mexico. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Shirley Schermer, Burials Program Director, Office of the State Archaeologist, 700 Clinton Street Building, University of Iowa, Iowa City, IA 52242, telephone (319) 384–0740, before January 26, 2001. Repatriation of the human remains to the Hopi Tribe of Arizona; the Pueblo of Acoma, New Mexico; the Pueblo of Cochiti, New Mexico; the Pueblo of Jemez, New Mexico; the Pueblo of Isleta, New Mexico; the Pueblo of Laguna, New Mexico; the Pueblo of Nambe, New Mexico; the Pueblo of Picuris, New Mexico; the Pueblo of Pojoaque, New Mexico; the Pueblo of San Felipe, New Mexico; the Pueblo of San Juan, New Mexico; the Pueblo of San Ildefonso, New Mexico; the Pueblo of Sandia, New Mexico; the Pueblo of Santa Ana, New Mexico; the Pueblo of Santa Clara, New Mexico; the Pueblo of Santo Domingo, New Mexico; the Pueblo of Taos, New Mexico; the Pueblo of Tesuque, New Mexico; the Pueblo of Zia, New Mexico; the Ysleta del Sur Pueblo of Texas; and the Zuni Tribe of the Zuni Reservation, New Mexico may begin after that date if no additional claimants come forward.

Dated: December 11, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–32918 Filed 12–26–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Office of the State Archaeologist, University of Iowa, Iowa City, IA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Office of the State Archaeologist, University of Iowa, Iowa City, IA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Office of the State Archaeologist, University of Iowa, professional staff in consultation with representatives of the the Iowa Tribe of Kansas and Nebraska; the Iowa Tribe of Oklahoma; the Sac and Fox Tribe of the Mississippi in Iowa; the Sac and Fox Nation of Missouri in Kansas and Nebraska; the Sac and Fox Nation of Oklahoma; the Ho-Chunk Nation of Wisconsin; the Omaha Tribe of Nebraska; the Santee Sioux Tribe of the Santee Reservation of Nebraska; the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; the Yankton Sioux Tribe of South Dakota; the Winnebago Tribe of Nebraska; the Otoe-Missouria Tribe of Indians, Oklahoma; the Ponca Tribe of Nebraska; the Ponca Tribe of Indians of Oklahoma; the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; the Pawnee Nation of Oklahoma; the Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux; the Flandreau Santee Sioux Tribe of South Dakota; the Prairie Band Potawatomi Indians, Kansas; the Citizen Potawatomi Nation, Oklahoma; and the non-Federally recognized Mendota Mdewakanton Dakota Community.

The Office of the State Archaeologist, University of Iowa, administers the provisions in the Code of Iowa that provide for any human remains over 150 years old to be reburied in a State cemetery. The Office of the State Archaeologist, University of Iowa, has in its possession the human remains of a minimum of 339 Native American individuals from Iowa whose cultural affiliation is unknown. These remains are considered "culturally unidentifiable" under NAGPRA, 43 CFR 10.10 (g). Federal regulations currently preclude disposition of culturally unidentifiable human remains absent an overriding legal requirement or a recommendation from the Secretary of the Interior, 43 CFR 10.9 (e) (6). In October 1997, the Iowa Office of the State Archaeologist, University of Iowa, and the Office of the State Archaeologist Indian Advisory Committee, a group composed of representatives of Native American tribes in and from Iowa, requested permission to rebury 339 "unidentified" human remains in the possession of the Office of the State Archaeologist, University of Iowa, in accordance with Iowa law. The request was supported by the Iowa Tribe of Kansas and Nebraska, the Iowa Tribe of Oklahoma, the Sac and Fox Nation of Missouri in Kansas and Nebraska, and the Sac and Fox Nation of Oklahoma.

The request was considered by the Native American Graves Protection and Repatriation Review Committee at its January 1998 meeting. The review committee recommended that the Office of the State Archaeologist, University of Iowa, rebury the culturally unidentifiable human remains in accordance with Iowa law following consultation with those Federally-recognized tribes and a group seeking Federal recognition that presently or formerly lived in Iowa. On March 3,

1999, the Departmental Consulting Archeologist, writing on behalf of the Secretary of the Interior, concurred with the review committee's recommendation regarding the disposition of the 339 culturally unidentifiable human remains according to provisions of the Code of Iowa 263B. Very limited and fragmentary remains of three individuals who were originally listed in the Office of the State Archaeologist, University of Iowa, inventory of human remains and associated funerary objects could not be determined to be Native American, and they will be reburied under the provisions of Iowa law.

Disposition of funerary objects associated with culturally unidentifiable human remains is neither governed by the Native American Graves Protection and Repatriation Act nor addressed by Code of Iowa 263B, and no associated funerary objects are included in this notice.

At an unknown date, human remains representing four individuals were recovered from an unknown location in Allamakee County, IA, by an unknown collector. At an unknown date, the human remains were donated to the State Historical Society of Iowa. In 1989, the human remains were transferred to the Office of the State Archaeologist from the State Historical Society of Iowa. No known individuals were identified. These remains have been identified as Native American based on osteological examination and the condition of the bones. These human remains cannot be dated or identified with an archeological context, and cannot be affiliated with any present-day Indian tribe or group.

Around 1929, human remains representing a minimum of 10 individuals were collected by Paul Cota, a local collector from the Decorah, IA, area at an unknown location on a bluff top south of Harpers Ferry, Allamakee County, IA. At an unknown date, the human remains were donated to Luther College, Decorah, IA. In 1990, the human remains were transferred to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on osteological examination, the condition of the bones, probable association with Native American artifacts, and geographic location. These human remains cannot be dated or identified with an archeological context, and cannot be affiliated with any present-day Indian tribe or group.

In the 1940's and 1950's, human remains representing a minimum of seven individuals were recovered from unknown sites in Allamakee County and possibly other northeastern Iowa counties during surface collections or excavations conducted by Henry P. Field and unknown collectors. At unknown dates, Mr. Field and unknown individuals donated the human remains to Luther College, Decorah, IA. In 1987, the human remains were transferred to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on osteological examination and the condition of the bones. These human remains cannot be dated or identified with an archeological context, and cannot be affiliated with any present-day Indian tribe or group.

At an unknown date, a human tooth representing one individual was recovered from site 13AM243, Allamakee County, IA, by Gavin Sampson, a collector from northeastern Iowa. At an unknown date, the tooth was donated to Luther College, Decorah, IA. In 1995, the tooth was transferred to the Office of the State Archaeologist. No known individual was identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13AM243 has been identified as a Late Woodland (A.D. 300–1000) site, a broad archeological tradition that cannot be identified with any present-day Indian tribe or group.

In 1990, human remains representing one individual were recovered from an eroding site, 13AM310, Allamakee County, IA, by a local resident. The remains were given to an Iowa Department of Natural Resources game warden and transferred to the Office of the State Archaeologist. No known individual was identified. These remains have been identified as Native American-Euro-American based on the osteological examination. Site 13AM310 has no archeological classification, and the human remains cannot be affiliated with any present-day Indian tribe or group.

At an unknown date, human remains representing one individual were collected from an unknown site northwest of Waterloo, Black Hawk County, IA, by an unknown individual. In 1897, the human remains were donated to the University Museum, University of Northern Iowa, Cedar Falls, IA, by J.C. Hartman, a local collector. In 1993, the human remains were transferred to the Office of the State Archaeologist. No known individual was identified. These remains have been identified as Native American based on the probable association with an ancient Native American site and osteological examination. These human remains cannot be dated or identified with an archeological context, and cannot be affiliated with any present-day Indian tribe or group.

In 1908, human remains representing eight individuals were recovered from 13BN29, Boone County, IA, during excavations conducted by Thompson Van Hyning, under the auspices of the Historical Department of Iowa, now the State Historical Society of Iowa. In 1985, the human remains in the possession of the State Historical Society of Iowa were transferred to the Office of the State Archaeologist. In 1987, additional human remains from the 1908 excavation were transferred to the Office of the State Archaeologist from the Boone, IA, city library. No information was available as to how or when the library acquired the human remains. No known individuals were identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13BN29 has been identified as a Middle Woodland (100 B.C.–A.D. 300) site, a broad archeological tradition that cannot be identified with any present-day Indian tribe or group.

At an unknown date, human remains representing one individual were collected from either site 13BN29 or site 13BN30, Boone County, IA, by Robert Breckenridge, professor of metallurgy, Iowa State University, Ames, IA. At an unknown date, the remains were donated to the Iowa State University Archaeological Laboratory, Ames, IA. In 1990, the Iowa State University Archaeological Laboratory transferred the remains to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Sites 13BN29 and 13BN30 have been identified as Middle Woodland (100 B.C.–A.D. 300) sites, a broad archeological tradition that cannot be identified with any present-day Indian tribe or group.

In 1967, human remains representing one individual were recovered from site 13CD10, Cedar County, IA, during archeological excavations conducted by the University of Iowa Department of Anthropology. No known individual was identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13CD10 has been identified as a Woodland (800 B.C.–A.D. 1000) site, a broad archeological tradition that

cannot be identified with any present-day Indian tribe or group.

Around 1991, human remains representing one individual were recovered from a rock garden near Mason City, Cerro Gordo County, IA, by an unnamed person. In 1992, the human remains were turned into the Iowa Department of Criminal Investigation, and transferred to the Office of the State Archaeologist in 1993 following investigation by the Iowa Department of Criminal Investigation. No known individual was identified. These remains have been identified as Native American based on osteological examination and the condition of the bones. These human remains cannot be dated or identified with an archeological context, and cannot be affiliated with any present-day Indian tribe or group.

In 1964, human remains representing 18 individuals were recovered from 2 mounds at site 13CT1, Clayton County, IA, during excavations conducted by University of Iowa Department of Anthropology. No known individuals were identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13CT1 contains mounds that have been identified as Late Archaic (2500–800 B.C.)/Early Woodland (800–100 B.C.) through Late Woodland (A.D. 300–1000). The human remains were recovered from mounds identified as Late Archaic/Early Woodland, a broad archeological tradition that cannot be identified with any present-day Indian tribe or group.

In 1979, human remains representing a minimum of one individual were recovered from site 13CT34, Clayton County, IA, during archeological excavations conducted by Office of the State Archaeologist personnel. Most of the human remains at this site were previously reburied, but some fragmentary remains were identified among the Office of the State Archaeologist collections. No known individual was identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13CT34 has been identified as a Woodland (800 B.C.–A.D. 1000) site, a broad archeological tradition that cannot be identified with any present-day Indian tribe or group.

In 1979, human remains representing a minimum of three individuals were recovered from site 13CT36, Clayton County, IA, during archeological excavations conducted by Office of the State Archaeologist personnel. Most of the human remains at this site were previously reburied, but some fragmentary remains were identified among the Office of the State Archaeologist collections. No known individuals were identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13CT36 has been identified as a Woodland (800 B.C.–A.D. 1000) site, a broad archeological tradition that cannot be identified with any present-day Indian tribe or group.

In 1993, human remains representing two individuals were recovered from site 13CY26, Clay County, IA, by Steve Swan and his family during an amateur excavation and were turned over to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13CY26 has been identified as having multiple occupation components dating to the Woodland (800 B.C.–A.D. 1000) and Mill Creek (A.D. 1000–1200) periods, but these human remains cannot be dated or identified with an archeological context, and cannot be affiliated with any present-day Indian tribe or group.

In 1967, human remains representing a minimum of four individuals were recovered from site 13DA64, Dallas County, IA, by the landowners, the DeCamps, during an uncontrolled excavation, and were turned over to the Iowa State University Archaeological Laboratory, Ames, IA. In 1994, the Iowa State University Archaeological Laboratory transferred the human remains to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13DA64 has been identified as a Great Oasis (A.D. 900–1100) site, an archeological culture that cannot be identified with any present-day Indian tribe or group.

At an unknown date, human remains representing one individual were recovered from an unknown mound near Spirit Lake, Dickinson County, IA, by Nestor Stiles, a local collector. At an unknown date, Mr. Stiles donated the human remains to the Sanford Museum, Cherokee, IA. In 1993, the human remains were transferred to the Office of the State Archaeologist. No known individual was identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. These human remains cannot be dated or identified with an archeological context, and cannot be affiliated with any present-day Indian tribe or group.

In 1994, human remains representing one individual were recovered at the edge of Mount Calvary cemetery in Dubuque, Dubuque County, IA, by the Dubuque Police Department after receiving a report from a local citizen. The police department transferred the human remains to the Office of the State Archaeologist. No known individual was identified. These remains have been identified as Native American based on osteological examination and the condition of the bones. These human remains cannot be dated or identified with an archeological context, and cannot be affiliated with any present-day Indian tribe or group.

At an unknown date, human remains representing three individuals were recovered from locations identified only as "various sections of Des Moines County," IA, by an unknown person. At an unknown date, Charles Buettner, a local collector who lived in Burlington, IA, from 1869 to 1920, transferred the human remains to a local high school. The school later donated the human remains to the Des Moines County Historical Museum, Burlington, IA, which transferred the human remains to the Office of the State Archaeologist in 1994. No known individuals were identified. These remains have been identified as Native American based on osteological examination and the condition and apparent age of the bones. These human remains cannot be dated or identified with an archeological context, and cannot be affiliated with any present-day Indian tribe or group.

In 1970, human remains representing two individuals were recovered from site 13DM31, Des Moines County, IA, after burials were exposed during plowing and partial excavation. The human remains were reburied, although some loose teeth from the burials were incorporated into the collections of the State Historical Society of Iowa. In 1988, the teeth were transferred to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13DM31 has been identified as a Woodland (800 B.C.–A.D. 1000) site, a broad archeological tradition that cannot be identified with any present-day Indian tribe or group.

At an unknown date, human remains representing a minimum of five individuals were recovered from an unknown site, possibly in Floyd County, IA, by an unknown individual.

At an unknown date, the human remains were donated to the Floyd County Museum, Floyd County, IA, by an unknown collector. In 1994, the human remains were transferred to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on the condition of the bones and apparent age. These human remains cannot be dated or identified with an archeological context, and cannot be affiliated with any present-day Indian tribe or group.

At an unknown date, human remains representing one individual were recovered from an unknown site in Fremont County, IA, by an unknown individual and donated to the Mills County Museum, Glenwood, IA. In 1994, the human remains were transferred to the Office of the State Archaeologist. No known individual was identified. These remains have been identified as Native American based on the probable association with Native American artifacts and osteological examination. These human remains cannot be dated or identified with an archeological context, and cannot be affiliated with any present-day Indian tribe or group.

In the 1960's, human remains representing one individual were accidentally exposed during construction and recovered from site 13FM63, in Waubonsie State Park, Fremont County, IA, by Larry Moffit, a park ranger. In 1993, Mr. Moffit donated the human remains to the Office of the State Archaeologist. No known individual was identified. These remains have been identified as Native American based on osteological examination and the condition of the bones. Site 13FM63 has no archeological classification, and the human remains from this site cannot be affiliated with any present-day Indian tribe or group.

In 1966, human remains representing a minimum of two individuals were recovered from site 13HB25, Humboldt County, IA, by Dale Halverson when they were accidentally exposed during plowing. Around 1992, an unknown individual gave the human remains to Steve Lee, an Iowa Archeological Society member. In 1995, Mr. Lee donated the human remains to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on osteological examination and the condition of the bones. Site 13HB25 has no archeological classification, and the human remains from this site cannot be affiliated with any present-day Indian tribe or group.

At an unknown date, human remains representing two individuals were collected from an unknown site in either Humboldt County or Wright County, IA, near Renwick, IA, by John Larson, Cleghorn, IA. At an unknown date, Mr. Larson donated the human remains to the Sanford Museum, Cherokee, IA. In 1992, the human remains were transferred to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on osteological examination and the condition of the bones. These human remains cannot be dated or identified with an archeological context, and cannot be affiliated with any present-day Indian tribe or group.

At an unknown date, human remains representing six individuals were recovered from an unknown site near Stratford, Hamilton County, IA, by Robert Breckenridge, professor of metallurgy, Iowa State University, Ames, IA. At an unknown date, additional human remains representing a minimum of one individual were recovered by Mr. Breckenridge from an unknown site described as the "Top of Glacial Mound," possibly in Hamilton County, IA. Mr. Breckenridge donated these human remains to the Iowa State University Archaeological Laboratory, Ames, IA. In 1994, the human remains were transferred to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on osteological examination and the condition of the bones. These human remains cannot be dated or identified with an archeological context, and cannot be affiliated with any present-day Indian tribe or group.

At an unknown date, human remains representing three individuals were recovered from an unknown site, possibly near Stratford, in either Hamilton County or Webster County, IA, by Dr. William Baird, a physician, of Ames, IA. At an unknown date, Dr. Baird donated the human remains to the Iowa State University Archaeological Laboratory, Ames, IA. In 1994, the Iowa State University Archaeological Laboratory transferred the human remains to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on osteological examination and the condition of the bones. These human remains cannot be dated or identified with an archeological context, and cannot be affiliated with any present-day Indian tribe or group.

In the early 1970's, human remains representing a minimum of 27 individuals were recovered from site 13HM10, Hamilton County, IA, during an excavation conducted by members of the Central Chapter of the Iowa Archeological Society. In 1986, David Carlson, one of the excavators, donated the human remains to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13HM10 has Archaic (8500–800 B.C.), Woodland (800 B.C.–A.D. 1000), and Great Oasis (A.D. 900–1100) components, all broad archeological traditions that cannot be identified with any present-day Indian tribe or group.

In 1993, human remains representing one individual were recovered from site 13HR27, Harrison County, IA, during a surface survey conducted by Louis Berger and Associates, Inc., and transferred to the Office of the State Archaeologist. No known individual was identified. These remains have been identified as Native American based on osteological examination and the condition of the bones. Site 13HR27 has no archeological classification, and the human remains from this site cannot be affiliated with any present-day Indian tribe or group.

In 1993 and 1995, human remains representing a minimum of one individual were recovered from site 13HR33, Harrison County, IA, during a statewide flood damage assessment project conducted by the Office of the State Archaeologist. No known individual was identified. These remains have been identified as Native American based on burial context, osteological examination, and the condition of the bones. Site 13HR33 has no archeological classification, and the human remains from this site cannot be affiliated with any present-day Indian tribe or group.

In 1995, human remains representing two individuals were recovered from the eroding surface of site 13HR103, Harrison County, IA, by Office of the State Archaeologist personnel. No known individuals were identified. These remains have been identified as Native American based on burial context, osteological examination, and the condition of the bones. Site 13HR103 has no archeological classification, and the human remains from this site cannot be affiliated with any present-day Indian tribe or group.

Around 1975, human remains representing one individual were recovered from site 13JF9, Jefferson

County, IA, by archeologist Anton Till during surface collection and test pit excavations, and reposed at the Office of the State Archaeologist. No known individual was identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13JF9 has been identified as having probable Archaic (8500–800 B.C.) and Woodland (800 B.C.–A.D. 1000) components, both broad archeological traditions that cannot be identified with any present-day Indian tribe or group.

In 1984, human remains representing a minimum of ten individuals were recovered from mound site 13JF11, Jefferson County, IA, during salvage excavations conducted by the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13JF11 has been identified as Woodland (800 B.C.–A.D. 1000), a broad archeological tradition that cannot be identified with any present-day Indian tribe or group.

In 1932, human remains representing a minimum of six individuals were recovered from site 13JK4, a rockshelter in Jackson County, IA, during an excavation conducted by Paul Sagers, a long-time collector in the area. In 1988, after the Iowa Department of Natural Resources acquired the Sagers Collection, the human remains were transferred to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13JK4 has been identified as having probable Archaic (8500–800 B.C.) to Middle Woodland (100 B.C.–A.D. 300) components, all broad archeological traditions that cannot be identified with any present-day Indian tribe or group.

In the 1930's, human remains representing 12 individuals were excavated from a series of sites in Jackson County, IA, by Paul Sagers, a long-time collector in the area. The remains of two individuals were recovered from 13JK33, a Late Woodland (A.D. 300–1000) site; the remains of one individual were recovered from 13JK61, a Middle Woodland (100 B.C.–A.D. 300) site; the remains of four individuals were recovered from 13JK62, a Late Woodland (A.D. 300–1000) site; the remains of two individuals were recovered from 13JK65, a possibly Late Woodland (A.D. 300–1000) site; and the remains of three individuals were recovered from 13JK109, a site with no archeological classification. In 1988, after the Iowa Department of Natural Resources acquired the Sagers Collection, the human remains were transferred to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on the documented association with an ancient Native American site, or based on the circumstances of their collection, their place of origin, and apparent age. All of these remains are from sites that cannot be dated or are dated only to broad archeological traditions that cannot be identified with any present-day Indian tribe or group.

In 1993, human remains representing three individuals were recovered from site 13JK98, Jackson County, IA, during excavations conducted by Dirk Marcucci, of Louis Berger and Associates, Inc., under a State Historical Resource Development Program grant to help determine the site's eligibility for the National Register of Historic Places. Later in 1993, the human remains were transferred to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13JK98 has been identified as having Late Archaic (2500–800 B.C.) and Woodland (800 B.C.–A.D. 1000) components, both broad archeological traditions that cannot be identified with any present-day Indian tribe or group.

In the 1930's, human remains representing a minimum of two individuals were recovered from site 13JN7, Jones County, IA, during excavations conducted by Paul Sagers, a long-time collector in the area. In 1988, after the Iowa Department of Natural Resources acquired the Sagers Collection, the human remains were transferred to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13JN7 has been identified as possibly Late Woodland (A.D. 300–1000), a broad archeological tradition that cannot be identified with any present-day Indian tribe or group.

In 1922, human remains representing four individuals were recovered from site 13JN8, Jones County, IA, by A.D. Corcoran, Anamosa, IA. At an unknown date, the human remains were donated to the Office of the State Archaeologist by an unknown individual. No known individuals were identified. These remains have been identified as Native American based on osteological examination and the condition of the bones. Site 13JN8 has no archeological classification, and the human remains from this site cannot be affiliated with any present-day Indian tribe or group.

In 1929–1930, human remains representing one individual were recovered from site 13JN117 (also known as 13JN38), Jones County, IA, during excavations conducted by Paul Sagers, a long-time collector in the area. In 1988, after the Iowa Department of Natural Resources acquired the Sagers Collection, the human remains were transferred to the Office of the State Archaeologist. No known individual was identified. These remains have been identified as Native American based on the circumstances of their collection, their place of origin, and apparent age. Site 13JN117 has no archeological classification, and the human remains from this site cannot be affiliated with any present-day Indian tribe or group.

In 1991, human remains representing one individual were recovered from a streambed, findspot 13JP–7, Jasper County, IA, by Kaye Postma, a local resident, and turned over to the Office of the State Archaeologist. No known individual was identified. These remains have been identified as Native American based on osteological examination and apparent age. These human remains cannot be dated or identified with an archeological context, and cannot be affiliated with any present-day Indian tribe or group.

Between 1991 and 1994, human remains representing 13 individuals were recovered from site 13LA12, Louisa County, IA, during archeological excavations conducted by the University of Iowa Department of Anthropology, Iowa City, IA. Most of the remains are fragmentary and were not identified as human until laboratory examination was conducted. Once identified, the remains were turned over to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13LA12 has been identified as Late Woodland (A.D. 300–1000), a broad archeological tradition that cannot be identified with any present-day Indian tribe or group.

In 1886, human remains representing a minimum of 14 individuals were recovered from site 13LA29, Toolesboro Mounds, Louisa County, IA, during excavations conducted by members of the Davenport Academy of Natural Sciences. The museum associated with this group is now known as the Putnam Museum, Davenport, IA. In 1991, the

human remains were transferred to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13LA29 has been identified as Middle Woodland (100 B.C.–A.D. 300), a broad archeological tradition that cannot be identified with any present-day Indian tribe or group.

In 1991, a human tooth representing one individual was recovered from site 13LA152, Louisa County, IA, during excavations conducted by the University of Iowa Department of Anthropology, Iowa City, IA. In 1995, the human remains were transferred to the Office of the State Archaeologist. No known individual was identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13LA152 has been identified as having Early (800–100 B.C.) and Middle Woodland (100 B.C.–A.D. 300) components, both broad archeological traditions that cannot be identified with any present-day Indian tribe or group.

In 1986, human remains representing one individual were recovered from site 13LO419, Lyon County, IA, during an archeological survey conducted by David Benn, Southwest Missouri State University, Springfield, MO. In 1995, the human remains were transferred to Luther College, Decorah, IA. Later that year, the human remains were transferred to the Office of the State Archaeologist. No known individual was identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13LO419 has been identified as possibly Great Oasis (A.D. 900–1100), a broad archeological culture that cannot be identified with any present-day Indian tribe or group.

In 1877 and 1914, human remains representing a minimum of 25 individuals were recovered from site 13MC44, Pine Creek Mounds, Muscatine County, IA, during excavations conducted in 1877 by members of the Davenport Academy of Natural Sciences and in 1914 by Truman Michelson of the Bureau of American Ethnology, Smithsonian Institution. The museum associated with the Davenport Academy of Natural Sciences is now known as the Putnam Museum, Davenport, IA. In 1991, the human remains were transferred to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13MC44 has been identified as Middle Woodland (100 B.C.–A.D. 300), a broad archeological tradition that cannot be identified with any present-day Indian tribe or group.

In 1992, human remains representing one individual were recovered from findspot 13ML–10, a sandbar in the West Nishnabotna River near Henderson, Mills County, IA, by John Boruff, a local collector, and turned over to the Office of the State Archaeologist. No known individual was identified. These remains have been identified as Native American based on osteological examination and apparent age. These human remains cannot be dated or identified with an archeological context, and cannot be affiliated with any present-day Indian tribe or group.

At an unknown date, human remains representing three individuals were recovered from an unknown location in Mills County, IA, by D.D. Davis, a local collector. At an unknown date, Mr. Davis recovered additional human remains representing one individual from an unknown site in Dasher's Hollow, Mills County, IA. In 1994, Mr. Davis donated these human remains to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on the circumstances of their collection, osteological examination, and apparent age. These human remains cannot be dated or identified with an archeological context, and cannot be affiliated with any present-day Indian tribe or group.

In 1990, a human tooth representing one individual was recovered from site 13ML42, Mills County, IA, during an excavation conducted by the Office of the State Archaeologist as part of an Iowa Humanities Board-funded archeology workshop for Iowa teachers. No known individual was identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13ML42 has been identified as Middle (100 B.C–A.D. 300) to Late Woodland (A.D. 300–1000), broad archeological traditions that cannot be identified with any present-day Indian tribe or group.

In 1955, human remains representing one individual were recovered from site 13ML49, Mills County, IA, during excavations conducted by local collectors D.D. Davis, Norm Gamble, Roy Hammer, and Ross Messinger. In 1994, Mr. Davis donated the human remains to the Office of the State Archaeologist. No known individual was identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13ML49 has been identified as Woodland (800 B.C.–A.D. 1000), a broad archeological tradition that cannot be identified with any present-day Indian tribe or group.

In the 1950's and 1960's, human remains representing a minimum of three individuals were recovered from site 13ML193, Tipton Mound, Mills County, IA, by equipment operators during two separate construction episodes, and were given to the landowner. In 1994, the human remains were transferred to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13ML193 has been identified as Middle Woodland (100 B.C.–A.D. 300), a broad archeological tradition that cannot be identified with any present-day Indian tribe or group.

In 1991, human remains representing one individual were recovered from the eroding surface of site 13ML247, Mills County, IA, during an archeological survey conducted by the Office of the State Archaeologist. No known individual was identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13ML247 has been identified as probably Woodland (800 B.C.–A.D. 1000), a broad archeological tradition that cannot be identified with any present-day Indian tribe or group.

In 1970, human remains representing six individuals were recovered from site 13ML283, Mills County, IA, during excavations conducted by a Mr. Miller, an area resident. In 1984, Dennis Miller, the excavator's brother, donated the human remains to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13ML283 has been identified as probably Woodland (800 B.C.–A.D. 1000), a broad archeological tradition that cannot be identified with any present-day Indian tribe or group.

In 1957, human remains representing four individuals were recovered from site 13ML428, Mills County, IA, during excavations conducted by D.D. Davis, a local collector, and two unknown individuals. In 1992, Mr. Davis donated the human remains to the Office of the State Archaeologist. No known

individuals were identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13ML428 has been identified as Woodland (800 B.C.–A.D. 1000), a broad archeological tradition that cannot be identified with any present-day Indian tribe or group.

In the 1980's, human remains representing one individual were recovered from an unknown location in Monona County, IA, by an unknown individual, and given to Paul Williams, a local collector. In 1984, Mr. Williams gave the human remains to Office of the State Archaeologist personnel during an archeological workshop. No known individual was identified. These remains have been identified as Native American based on osteological examination and the condition of the bones. These human remains cannot be dated or identified with an archeological context, and cannot be affiliated with any present-day Indian tribe or group.

In 1993, human remains representing one individual were recovered from findspot 13PA–2, a sandbar along the Nishnabotna River in Page County, IA, by Dennis Miller, a local collector, and turned over to the Office of the State Archaeologist. No known individual was identified. These remains have been identified as Native American based on osteological examination and apparent age of the bone. These human remains cannot be dated or identified with an archeological context, and cannot be affiliated with any present-day Indian tribe or group.

In 1963, human remains representing a minimum of 15 individuals were recovered from site 13PK38, Polk County, IA, during excavations by Jack Musgrove, of the State Historical Society of Iowa, Des Moines, IA, after construction had accidentally uncovered the burials. In the 1980's and 1990's, the State Historical Society of Iowa transferred the human remains to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13PK38 has been identified as Great Oasis (A.D. 900–1100), a broad archeological culture that cannot be identified with any present-day Indian tribe or group.

In 1992, human remains representing a minimum of 12 individuals were recovered from site 13PK63, Polk County, IA, by the West Des Moines Police Department when burials were exposed and destroyed during land development activities. The human remains were transferred to the Office of the State Archaeologist when it was determined the site was not a crime scene. No known individuals were identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13PK63 has been identified as Great Oasis (A.D. 900–1100), a broad archeological culture that cannot be identified with any present-day Indian tribe or group.

In 1991, human remains representing a minimum of one individual were recovered from site 13PK496, Polk County, IA, during an excavation conducted by Dan Higginbottom, a University of Minnesota graduate student conducting archeological research on the South Skunk River, IA. In 1992, Mr. Higginbottom transferred the human remains to the Office of the State Archaeologist. No known individual was identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13PK496 has been identified as possibly Woodland (800 B.C.–A.D. 1000) or Great Oasis (A.D. 900–1100), broad archeological traditions that cannot be identified with any present-day Indian tribe or group.

Around 1970, human remains representing one individual were recovered from an unknown location along a river bank east of Emmetsburg, Palo Alto County, IA, by local collectors Tim Miller, Tim Kulow, and Dean Lammers. In 1970, they donated the human remains to the University Museum, University of Northern Iowa, Cedar Falls, IA. In 1993, the human remains were transferred to the Office of the State Archaeologist. No known individual was identified. These remains have been identified as Native American based on osteological examination and apparent age of the bone. These human remains cannot be dated or identified with an archeological context, and cannot be affiliated with any present-day Indian tribe or group.

In 1967, human remains representing a minimum of two individuals were recovered from site 13PM25, Plymouth County, IA, during an archeological excavation conducted by the University of Iowa Department of Anthropology, Iowa City, IA. No known individuals were identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13PM25 has been identified as Great Oasis (A.D. 900–1100), a broad archeological culture that cannot be identified with any present-day Indian tribe or group.

In the 1960's, human remains representing two individuals were recovered from site 13PW56, Pottawattamie County, IA, by Burnel Bruning, the landowner, when they were accidentally uncovered during plowing. In 1989, Mr. Bruning donated the human remains to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13PW56 has been identified as possibly Late Archaic (2500–800 B.C.), a broad archeological tradition that cannot be identified with any present-day Indian tribe or group.

In 1995, human remains representing one individual were recovered from findspot 13SR–1, a sandbar in Squaw Creek, north of Ames, Story County, IA, by Jimmie Thompson, a local collector. Later that year, Mr. Thompson transferred the human remains to the Office of the State Archaeologist. No known individual was identified. These remains have been identified as Native American based on osteological examination and apparent age of the bone. These human remains cannot be dated or identified with an archeological context, and cannot be affiliated with any present-day Indian tribe or group.

In the late 1800's, human remains representing one individual were recovered from an unknown mound, near Princeton, Scott County, IA, by an unknown individual. Around 1889, W.P. Hall, a local collector, donated the human remains to the Putnam Museum, Davenport, IA. In 1995, the human remains were transferred to the Office of the State Archaeologist. No known individual was identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Although the exact site is unknown, almost all mounds in Iowa are believed to date to the Woodland Period (800 B.C.–A.D. 1000), a broad archeological tradition that cannot be identified with any present-day Indian tribe or group.

In 1877, human remains representing six individuals were recovered from site 13ST82, Scott County, IA, during excavations conducted by Rev. J. Gass and other members of the Davenport Academy of Natural Sciences. The museum associated with this group is now known as the Putnam Museum, Davenport, IA. In 1993 and 1995, the human remains were transferred to the Office of the State Archaeologist. No

known individuals were identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13ST82 has been identified as Middle Woodland (100 B.C.–A.D. 300), a broad archeological tradition that cannot be identified with any present-day Indian tribe or group.

In 1944, very fragmented human remains representing approximately 24 individuals were recovered from site 13ST116, Scott County, IA, during an archeological excavation conducted by John Bailey, director of the Davenport Public Museum, now known as the Putnam Museum. The fragmentary nature of the remains makes it difficult to provide an accurate count of the number of individuals. In 1995, the Putnam Museum transferred the human remains to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13ST116 has been identified as probably late Middle (100 B.C.–A.D. 300) to early Late Woodland (A.D. 300–1000), broad archeological traditions that cannot be identified with any present-day Indian tribe or group.

Around 1982, human remains representing one individual were recovered from an unknown location in Webster County, IA, by Tom Mercer, a local collector. In 1994, the human remains were transferred to the Office of the State Archaeologist. No known individual was identified. These remains have been identified as Native American based on osteological examination and apparent age. These human remains cannot be dated or identified with an archeological context, and cannot be affiliated with any present-day Indian tribe or group.

In 1969, human remains representing a minimum of three individuals were recovered from site 13WB6, Webster County, IA, by Tom Martin, a Cedar Falls teacher, and his students. At an unknown date, Mr. Martin donated the human remains to the University Museum, University of Northern Iowa, Cedar Falls, IA. In 1993, the University Museum transferred the human remains to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13WB6 has been identified as Late Woodland (A.D. 300–1000) or Great Oasis (A.D. 900–1100), broad archeological traditions that cannot be identified with any present-day Indian tribe or group.

In 1905, human remains representing six individuals were recovered from an unknown site in the Springdale area of Sioux City, Woodbury County, IA, when they were exposed during clay removal by tile factory workers. An unnamed local resident assisted with the excavation of the burials, and turned them over to the Sioux City Academy of Science and Letters. The academy's collections became part of the Sioux City Public Museum. In 1994, the human remains were transferred to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on the circumstances of their collection, their place of origin, osteological examination, and apparent age. These human remains cannot be dated or identified with an archeological context, and cannot be affiliated with any present-day Indian tribe or group.

At an unknown date, human remains representing one individual were recovered from the eroding surface of site 13WD27, Woodbury County, IA, by an unknown individual who turned them over to the Sioux City Police Department. In 1993, the human remains were transferred to the Office of the State Archaeologist. No known individual was identified. These remains have been identified as Native American based on their place of origin and apparent age. These human remains cannot be dated or identified with an archeological context, and cannot be affiliated with any present-day Indian tribe or group.

In 1990, human remains representing one individual were recovered from the eroding surface of site 13WD78, Woodbury County, IA, by Woodbury County Conservation Board and Office of the State Archaeologist personnel. The human remains were taken to the Office of the State Archaeologist. No known individual was identified. These remains have been identified as Native American based on their place of origin and apparent age of the remains. Site 13WD78 has no archeological classification, and these human remains cannot be affiliated with any present-day Indian tribe or group.

In the early 1950's, human remains representing two individuals were recovered from site 13WH35, Winneshiek County, IA, by Dale Henning. At an unknown date, the human remains were donated to Effigy Mounds National Monument, a unit of the National Park Service. In 1986, the human remains were transferred to the Office of the State Archaeologist as site 13WH35 is not located on Federal property. In the 1960's, additional human remains representing one individual were recovered from site 13WH35 by Gavin Sampson, a local collector. At an unknown date, Mr. Sampson donated the human remains to Luther College, Decorah, IA. In 1987, the human remains were transferred to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13WH35 has been identified as having Archaic (8500–800 B.C.), Woodland (800 B.C.–A.D. 1000), and Oneota (A.D. 1200–1700) components. The human remains of at least one of the individuals are from the Woodland component, a broad archeological culture that cannot be identified with any present-day Indian tribe or group, and the remaining human remains cannot be dated or affiliated with any present-day Indian tribe or group.

At an unknown date, human remains representing three individuals were recovered from site 13WH79, a rock shelter, in Winneshiek County, IA, by Gavin Sampson, a local collector. At an unknown date, Mr. Sampson donated the human remains to Luther College, Decorah, IA. In 1995, the human remains were transferred to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on the documented association with an ancient Native American site. Site 13WH79 has no archeological classification, and these human remains cannot be affiliated with any present-day Indian tribe or group.

At an unknown date, human remains representing two individuals were recovered from an unknown site or sites, probably in Iowa, by an unknown individual. More than 30 years ago, an unknown individual donated the human remains to the Ottumwa High School, Ottumwa, Wapello County, IA. In 1990, the human remains were transferred to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on osteological examination and apparent age of the bone. These human remains cannot be dated or identified with an archeological context, and cannot be affiliated with any present-day Indian tribe or group.

At an unknown date, human remains representing one individual were recovered from an unknown site, probably in Iowa, by an unknown individual. At an unknown date, the

human remains were donated to the Conger House Museum, Washington, Washington County, IA. In 1992, the human remains were transferred to the Office of the State Archaeologist. No known individual was identified. These remains have been identified as Native American based on osteological examination and the condition of the bones. These human remains cannot be dated or identified with an archeological context, and cannot be affiliated with any present-day Indian tribe or group.

At an unknown date, human remains representing one individual were recovered from an unknown site in Iowa by John Morrie, a collector from Fort Madison, Lee County, IA. In 1994, the human remains were transferred to the Office of the State Archaeologist by the Morrie family. Provenience information was limited to a note accompanying the human remains indicating that they came from "Dickson," IA. There is a town named Dixon in Scott County, IA, but no town spelled Dickson on the Iowa map. No known individual was identified. These remains have been identified as Native American based on osteological examination and the apparent age of the bones. These human remains cannot be dated or identified with an archeological context, and cannot be affiliated with any present-day Indian tribe or group.

At an unknown date, human remains representing a minimum of seven individuals were recovered from an unknown site, probably in Iowa, possibly by Marrion Boots. In 1933, the human remains were accessioned by the State Historical Society of Iowa, recording only that they were from Marrion Boots, Stuart, Guthrie County, IA. In 1988, the human remains were transferred to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on the possible association with Native American artifacts, osteological examination, and the condition of the bones. These human remains cannot be dated or identified with an archeological context, and cannot be affiliated with any present-day Indian tribe or group.

In the late 1800's and early 1900's, human remains representing three individuals were recovered from unknown locations, probably in Iowa, by Richard Herrmann, a collector from the Dubuque, IA, area. At an unknown date, Mr. Herrmann donated the human remains to the Ham House, owned by the Dubuque County Historical Society, Dubuque, IA. In 1986, the human remains were transferred to the Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on the circumstances of their collection, their place of origin, osteological examination, and apparent age of the bones. These human remains cannot be dated or identified with an archeological context, and cannot be affiliated with any present-day Indian tribe or group.

In the 1920's or 1930's, human remains representing three individuals were recovered from an unknown location, probably in Iowa, by Paul Sagers, a local collector from Jackson County, IA. In 1988, after the Iowa Department of Natural Resources acquired the Sagers Collection, the human remains were turned over to the Iowa Office of the State Archaeologist. No known individuals were identified. These remains have been identified as Native American based on osteological examination and the condition of the bones. These human remains cannot be dated or identified with an archeological context, and cannot be affiliated with any present-day Indian tribe or group.

Based on the above-mentioned information, officials of the Office of the State Archaeologist, University of Iowa, have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 339 individuals of Native American ancestry. Additionally, and in accordance with the recommendations of the Native American Graves Protection and Repatriation Review Committee, officials of the Office of the State Archaeologist, University of Iowa, have determined that, pursuant to 43 CFR 10.2 (e), there is no relationship of shared group identity that can be reasonably traced between these Native American human remains and any present-day Indian tribe or group, and that the disposition of these Native American human remains will follow Code of Iowa 263B. 8.

This notice has been sent to officials of the Iowa Tribe of Kansas and Nebraska; the Iowa Tribe of Oklahoma; the Sac and Fox Tribe of the Mississippi in Iowa; the Sac and Fox Nation of Missouri in Kansas and Nebraska; the Sac and Fox Nation of Oklahoma; the Ho-Chunk Nation of Wisconsin; the Omaha Tribe of Nebraska; the Santee Sioux Tribe of the Santee Reservation of Nebraska; the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; the Yankton Sioux Tribe of South Dakota; the Winnebago Tribe of Nebraska; the Otoe-Missouria Tribe of Indians, Oklahoma; the Ponca Tribe of Nebraska; the Ponca Tribe of Indians of Oklahoma; the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; the Pawnee Nation of Oklahoma; the Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux; the Flandreau Santee Sioux Tribe of South Dakota; the Prairie Band Potawatomi Indians, Kansas; the Citizen Potawatomi Nation, Oklahoma; and the non-Federally recognized Mendota Mdewakanton Dakota Community. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Shirley Schermer, Burials Program Director, Office of the State Archaeologist, 700 Clinton Street Building, University of Iowa, Iowa City, IA 52242, telephone (319) 384–0740, before January 26, 2001. Disposition of the human remains may begin after that date if no additional claimants come forward.

Dated: December 11, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–32920 Filed 12–26–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[DES 00–58]

Draft Supplemental EIS/EIR for Acquisition of Additional Water for Meeting the San Joaquin River Agreement Flow Objectives, 2000–2010

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the Draft Supplemental Environmental Impact Statement/Environmental Impact Report (DSEIS/EIR).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation) and the San Joaquin River Group Authority (SJRGA) are preparing a joint DSEIS/EIR for the acquisition of additional water for meeting the San Joaquin River Agreement flow objectives, 2001–2010. This document covers minor additions to the Proposed Project/Action addressed in the Final EIS/EIR (FEIS/EIR) prepared for Meeting Flow Objectives for the San Joaquin River Agreement, 1999–2010 (January 1999). The FEIS/EIR documented the environmental consequences of acquiring and using flows specified in

the San Joaquin River Agreement (SJRA).

The purpose of the Proposed Action is to supplement, under Paragraph 8 of the SJRA, the water provided by the SJRA that has been analyzed in the FEIS/EIR. The supplemental water consists of up to 47,000 acre-feet from the Tuolumne and Merced rivers to provide full Vernalis Adaptive Management Plan (VAMP) test flow conditions at Vernalis during "double step years" for water years 2001 through 2010. This supplemental water may also assist Reclamation in meeting the Anadromous Fish Restoration Plan, Bay-Delta flow objectives as required by State Board Decision 1641, and the U.S. Fish and Wildlife Service's 1995 Biological Opinion for Delta Smelt.

The Proposed Project/Action area includes the Tuolumne, Merced, Stanislaus, and San Joaquin Rivers and related reservoirs and water districts in the counties of Tuolumne, Merced, Stanislaus, San Joaquin, Mariposa, and Calaveras counties.

DATES: Submit written comments on the DSEIS/EIR on or before February 12, 2001. Comments may be submitted to Reclamation or SJRGA at the addresses provided below. The public hearing on the DSEIS/EIR will be held on February 1, 2001, at 1:30 p.m. in Sacramento.

ADDRESSES: The public hearing will be held at the Federal Building at 2800 Cottage Way, Sacramento, California, in Conference Room 1003, adjacent to the Cottage Cafe near the south building entrance.

Written comments on the DSEIS/EIR should be addressed to Mr. John Burke, Bureau of Reclamation, Mid-Pacific Region, 2800 Cottage Way, MP–410, Sacramento, CA 95825–1898, or Mr. Dan Fults, San Joaquin River Group Authority, 200 Capitol Mall, Suite 900, Sacramento, CA 95814.

Copies of the DSEIS/EIR may be requested from Mr. Dan Meier by calling (916) 978–5559.

See Supplementary Information section for locations where copies of the DSEIS/EIR are available for public inspection.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may 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.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Meier, Reclamation, at (916) 978–5559 (TDD 916/978–5608); or Mr. Dan Fults, SJRGA, at (916) 449–3957.

SUPPLEMENTARY INFORMATION: The SJRA was established to provide a level of protection equivalent to the San Joaquin River flow objectives contained in the State Water Resources Control Board's (SWRCB) 1995 Water Quality Control Plan for the lower San Joaquin River and San Francisco Bay-Delta Estuary (Delta). A key part of the SJRA is the VAMP which is a scientifically-based adaptive fishery management plan to help determine the relationships between flows, exports, and other factors on fish survival in this region of the Delta. The SWRCB adopted pertinent provisions of the SJRA on December 29, 1999, and issued its Revised Water Right Decision 1641 (D–1641) containing these provisions on March 15, 2000. D–1641 approved implementation of the VAMP through December 31, 2011.

SJRGA and Reclamation prepared the FEIS/EIR in January 1999 to meet CEQA and NEPA requirements to address environmental impacts associated with acquiring water to meet the flow objectives in the SJRA. This document addressed the need for up to 110,000 acre-feet to meet a 31-day spring pulse flow target in the San Joaquin River at Vernalis. The SJRA allows for willing sellers among the SJRGA to sell Reclamation additional water when the spring pulse flow target exceeds 110,000 acre-feet. The FEIS/EIR prepared for the SJRA acknowledged the need for this additional water from willing sellers in some water years but did not address the environmental impacts associated with acquiring this supplemental water.

The purpose of the DSEIS/EIR is to update and supplement analyses presented in the 1999 FEIS/EIR to address the acquisition of up to 47,000 acre-feet of water annually during the 2001 through 2010 water years.

Copies of the DSEIS/EIR are available for public inspection and review at the following locations:

- San Joaquin River Group Authority, 400 Capitol Mall, Suite 900, Sacramento, CA 95814; telephone: (916) 449–3957
- Bureau of Reclamation, Office of Policy, Room 7456, 1849 C Street NW, Washington DC 20240; telephone: (202) 208–4662
- Bureau of Reclamation, Reclamation Service Center Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, Colorado 80225; telephone: (303) 445–2072
- Bureau of Reclamation, Public Affairs Office, 2800 Cottage Way, Sacramento, California 95825–1898; telephone: (916) 978–5100
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW, Main Interior Building, Washington DC 20240–0001

Hearing Process Information: A public hearing on the DSEIS/EIR will be held on February 1, 2001. The public may provide verbal testimony on the content of the environmental document at this hearing. Written comments will also be accepted.

Dated: December 18, 2000.

Lester A. Snow,

Regional Director.

[FR Doc. 00–32923 Filed 12–26–00; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 20, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for reveiw and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz [{202} 693–4127 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ({202} 693–4129 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- evaluate the proposed collection of inforamtion is necessasry for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utlity, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or ohter forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment and Training Administration.

Title: Domestic Agricultural In-Season Wage Report.

OMB Number: 1205–0017.

Affected Public: Individuals or households; Farms; Federal Government; State, Local, or Tribal govt.

Form	Total respondents	Frequency	Total responses	Average time per responses	Estimated total burden
ETA–232	600	One-time	600	11 Hrs.	6,600
ETA 232A	38,805	Annually	38,805	15 Min.	9,701
Totals	39,405		39,405	.41 Hours	16,301

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: State Employment agencies need prevailing wage rates in order to process an employer's application for intrastate and interstate and H–2A foreign farm workers. The wage rate covers agricultural (crop and livestock) and logging jobs. Domestic Migrant and local seasonal as well as foreign H–2A farm workers are hired for these jobs.

Type of Review: New collection.

Agency: Employment and Training Administration.

Title: Reporting and Performance Standards System for Indian and Native American Programs Under Title I, Section 166 of the Workforce Investment Act (WIA).

OMB Number: 1205–0New.

Affected Public: State, Local, and Tribal Govt.; Not-for-profit institutions.

Section 166 Activity (Comprehensive Services)	Number of respondents	Frequency	Total responses	Hours per response	Total burden hours
Plan Narrative	150	1	150	12	1,800
Recordkeeping	150	—	17,000	3	51,000
Participant Report ETA 9084	150	2	300	9.67	2,901
Totals	150		17,450	24.67	55,701

Section 166 Activity (Supplemental Youth Services)	Number of respondents	Frequency	Total responses	Hours per response	Total burden hours
Plan Narrative	115	1	115	6	690
Recordkeeping	115	—	10,000	2	20,000
Participant Report ETA 9085	115	2	230	9.67	2,224
Totals	115		10,345	17.67	22,914

Total Burden: 78,615 Hours.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $1,065,000.

Description: This is a proposed collection of participant information relating to the operation of employment and training programs for Indian and Native Americans under Title I, section 166 of the Workforce Investment Act (WIA). It also contains the basis of the new performance standards system for WIA section 166 grantees. The burden estimates for this collection include the Supplemental Youth Service Program as well as the Comprehensive Services Program authorized under section 166. Burden estimates do not include those tribes currently participating in the demonstration under Public Law 102–477.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–32954 Filed 12–26–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Federal Advisory Council on Occupational Safety and Health; Notice of Meeting

Notice is hereby given of the date and location of the next meeting of the Federal Advisory Council on Occupational Safety and Health (FACOSH), established under Section 1–5 of Executive Order 12196 on February 6, 1980, published in the **Federal Register**, February 27, 1980 (45 FR 1279). FACOSH will meet on January 11, 2001, starting at 1:30 p.m., in Room N–4437 A/B/C/D of the

Department of Labor Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210. The meeting will adjourn at approximately 3:30 p.m., and will be open to the public. All persons wishing to attend this meeting must exhibit a photo identification to security personnel.

Agency items will include:

1. Call to Order.

2. 55th Annual Federal Safety and Health Training Conference report and plans for the 56th Annual Training Conference.

3. Federal Executive Institute training proposal.

4. Reports by Subcommittees.

5. New business.

6. Adjournment.

Written data, views or comments may be submitted, preferably with 20 copies, to the Office of Federal Agency Programs, at the address provided below. All such submissions, received by January 4, 2001, will be provided to the members of the Federal Advisory Council and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify the Office of Federal Agency Programs by the close of business January 4, 2001. the request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Federal Advisory Council may be allowed to speak, as time permits, at the discretion of the Chairperson. Individuals with disabilities who wish to attend the meeting should contact John E. Plummer at the address indicated below, if special accommodations are needed.

For additional information, please contact John E. Plummer, Director, Office of Federal Agency Programs, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3112, 200 Constitution Avenue, NW., Washington, DC 20210, telephone number (202) 693–2122. An official record of the meeting will be available for public inspection at the Office of Federal Agency Programs.

Signed at Washington, DC, this 20th day of December 2000.

Charles N. Jefress,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 00–32909 Filed 12–26–00; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–144]

5th Digital Earth Community Meeting

AGENCY: National Aeronautics and Space Administration (Lead Agency).

ACTION: Notice of Meeting.

SUMMARY: The Federal Interagency Digital Earth Working Group will hold the 5th Digital Earth Community Meeting that will focus on accomplishments thus far, and the future of Digital Earth. The intent of this meeting is to continue the efforts of enabling and facilitating the evolution of Digital Earth, a digital representation of the planet that will allow people to access and apply geo-spatial data from multiple resources. Federal, state, and local government along with private industry, academia and others will participate in presentations, workshops and panel discussions. Together we will educate and empower each other to continue to develop the Digital Earth environment.

DATES: Wednesday, January 31, 2001 from 8 am to 5 pm. Registration beginning at 7:30 am.

ADDRESSES: Capitol Union Building, Penn State University at Harrisburg, 777 W. Harrisburg Pike, Middletown, PA 17057.

FOR FURTHER INFORMATION CONTACT: To register for the meeting, please contact PSU Continuing Education at 717–948–6505 or e-mail: pshceweb@psu.edu. If you would like to present at this meeting, please contact Dr. Todd Bacastow at 814–863–0049 or e-mail bacastow@psu.edu. The deadline for registration is Wednesday, January 24, 2001. This is an outreach service of the College of Earth and Mineral Sciences.

SUPPLEMENTARY INFORMATION:

Format: The one day session will concentrate on presentations, workshops, and panel discussions. The status of The National Digital Earth Initiative, What is Digital Earth and It's Community, Using Digital Earth Guidelines, Developing Applications, Involving Students, and Data Accessibility will all be discussed. Upcoming conferences, organizational committees and collaborative efforts will be addressed as well. There will be space available for personal demonstrations—and discussions throughout the day. Although the meeting is open to all interested parties, time availability for presentations and demonstrations is limited and will be allocated on a first come basis. All interested parties must contact Dr. Todd Bacastow by January 17, 2001.

Web Information: Additional details on the Community Meeting will be posted to *www.digitalearth.gov* in the near future.

Dated: December 13, 2000.

Thomas S. Taylor,

NASA Digital Earth Program Manager.

[FR Doc. 00–32627 Filed 12–26–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Open Forum Meeting on Procurement Policies, Practices, and Initiatives

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: NASA will conduct an open forum meeting to solicit questions, views and opinions of interested persons or firms concerning NASA's procurement policies, practices, and initiatives. The purpose of the meeting is to have an open discussion between NASA's Associate Administrator for Procurement, industry, and the public. Note: This is not a meeting about doing business with NASA for new firms, nor does it focus particularly on small businesses or specific contracting opportunities.

DATE: Tuesday, January 23, 2001, from 2:00 p.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at the NASA Goddard Space Flight Center, Bldg. 26, Room 205, Greenbelt, MD 20771. Entrance to the facility is from the Main Gate on Greenbelt Road, MD Route 193.

TO RESERVE A SEAT OR FOR FURTHER INFORMATION CONTACT: Debbie Hollebeke [301–286–9208] or Sherry Pollock [301–286–9511], NASA Goddard Space Flight Center, Mail Code 200, Greenbelt, MD 20771. Interested attendees must RSVP no later than Tuesday, January 16, 2001. Reservations must be made by phone. Auditorium capacity is limited to approximately 120 persons; therefore, attendance is limited to a maximum of two representatives per firm.

SUPPLEMENTARY INFORMATION:

Admittance

Attendees must be a U.S. Citizen or have a valid green card in their possession. Doors will open at 1:30 p.m.

Format

There will be a presentation by the Associate Administrator for Procurement, followed by a question

and answer period. Procurement issues will be discussed, including NASA's newest initiatives used in the award and administration of contracts. Questions for the open forum should be presented at the meeting and should not be submitted in advance. Position papers are not being solicited.

Initiatives

In addition to the general discussion mentioned above, NASA invites comments or questions relative to its ongoing Procurement Innovations, some of which include, but are not limited to, the following:

Focus on Safety & Health: This ensures that contractors take all reasonable safety and occupational health measures in performing NASA contracts.

Risk-Based Acquisition Management: This initiative seeks to integrate the principles of risk management throughout the acquisition process by purposefully considering the various aspects of risk when developing the acquisition strategy, selecting sources, choosing contract type, structuring fee incentives, and conducting contractor surveillance.

Consolidated Contracting Initiative: The CCI initiative emphasizes developing, using, and sharing contracts to meet Agency objectives.

Performance-Based Contracting: This initiative requires structuring all aspects of an acquisition around the purpose of the work to be performed as opposed to how the work is to be performed or broad and imprecise statements of work. It emphasizes quantifiable, measurable performance requirements and quality standards in developing statements of work, selecting contractors, determining contract type, incentives, and performing contract administration, including surveillance.

Award Term Initiative: This initiative will test a non-traditional method of motivating and rewarding contractor performance. Contractors will receive periodic performance evaluations and scores, which can result in an extension of the term of the contract in return for excellent performance.

Tom Luedtke,

Associate Administrator for Procurement.

[FR Doc. 00–32963 Filed 12–26–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Draft Guidebook for Proposers Responding to a NASA Research Announcement (NRA)

ACTION: Invitation for comment.

SUMMARY: Interested persons are invited to comment on the Draft Guidebook for Proposers Responding to a NASA Research Announcement (NRA). The Guidebook describes the policies and procedures of the Broad Agency Announcement used by the National Aeronautics and Space Administration (NASA) known as the NASA Research Announcement (NRA). The Guidebook can be accessed online at: http://www.hq.nasa.gov/office/procurement/nraguidebook/ Further clarifying changes to the discussion of conflict of interest (C.4) may be anticipated prior to its final issuance.

EFFECTIVE DATE: Comments must be received on or before February 28, 2001. Late comments will be considered only to the extent practicable.

ADDRESSES: Written comments should be sent to Diane Thompson, Code H, Office of Procurement, 300 E Street, SW, Washington DC 20546. Electronic mail comments may be submitted to *diane.thompson@hq.nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Diane Thompson, Code HC, 202-358–0514, or email: *diane.thompson@hq.nasa.gov.*

Tom Luedtke,

Associate Administrator for Procurement.

[FR Doc. 00–32964 Filed 12–26–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Office of the Federal Register

Agreements In Force as of December 31, 1999 Between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States

AGENCY: Office of the Federal Register, NARA.

ACTION: Notice of availability of agreements.

SUMMARY: The American Institute in Taiwan has concluded a number of agreements with the Taipei Economic and Cultural Representative Office in the United States (formerly the Coordination Council for North American Affairs) in order to maintain cultural, commercial and other unofficial relations between the American people and the people of Taiwan. The Director of the Federal Register is publishing the list of these agreements on behalf of the American Institute in Taiwan in the public interest.

SUPPLEMENTARY INFORMATION: Cultural, commercial and other unofficial relations between the American people and the people of Taiwan are maintained on a non-governmental basis through the American Institute in Taiwan (AIT), a private nonprofit corporation created under the Taiwan Relations Act (Public Law 96–8; 93 Stat. 14). The Coordination Council for North American Affairs (CCNAA) was established as the nongovernmental Taiwan counterpart to AIT.

On October 10, 1995 the CCNAA was renamed the Taipei Economic and Cultural Representative Office in the United States (TECRO).

Under section 12 of the Act, agreements concluded between AIT and TECRO (CCNAA) are transmitted to the Congress, and according to sections 6 and 10(a) of the Act, such agreements have full force and effect under the law of the United States.

The texts of the agreements are available from the American Institute in Taiwan, 1700 North Moore Street, Suite 1700, Arlington, Virginia, 22209. For further information, please telephone (703) 525–8474, or fax (703) 841–1385.

Following is a list of agreements between AIT and TECRO (CCNAA) which were in force as of December 31, 1999.

Dated: December 19, 2000.

Richard C . Bush,

Chairman and Managing Director, American Institute in Taiwan.

Dated: December 21, 2000.

Raymond A. Mosley,

Director of the Federal Register.

AIT—TECRO Agreements

In Force as of December 31, 1999

Status of Tecro

The Exchange of Letters concerning the change in the name of the Coordination Council for North American Affairs (CCNAA) to the Taipei Economic and Cultural Representative Office in the United States (TECRO). Signed December 27, 1994 and January 3, 1995. Entered into force January 3, 1995.

Agriculture

1. Guidelines for a cooperative program in the agriculture sciences.

Signed January 15 and 28, 1986. Entered into force January 28, 1986.

2. Amendment amending the 1986 guidelines for a cooperative program in the agricultural sciences. Effected by exchange of letters September 1 and 11, 1989. Entered into force September 11, 1989.

3. Cooperative service agreement to facilitate fruit and vegetable inspection through their designated representatives, the United States Department of Agriculture Animal and Plant Health Inspection Service (APHIS) and the Taiwan Provincial Fruit Marketing Cooperative (TPFMC) supervised by the Taiwan Council of Agriculture (COA). Signed April 28, 1993. Entered into force April 28, 1993.

4. Memorandum of agreement concerning sanitary/phytosanitary and agricultural standards. Signed November 4, 1993. Entered into force November 4, 1993.

Aviation

1. Memorandum of agreement concerning the arrangement for certain aeronautical equipment and services relating to civil aviation (NAT-I–845), with annexes. Signed September 24 and October 23, 1981. Entered into force October 23, 1981.

2. Amendment amending the memorandum of agreement concerning aeronautical equipment and services of September 24 and October 23, 1981. Signed September 18 and 23, 1985. Entered into force September 3, 1985.

3. Agreement amending the memorandum of agreement of September 24 and October 23, 1981, concerning aeronautical equipment and services. Signed September 23 and October 17, 1991. Entered into force October 17, 1991.

4. Air transport agreement, with annexes. Signed at Washington March 18, 1998. Entered into force March 18, 1998.

Conservation

1. Memorandum on cooperation in forestry and natural resources conservation. Signed May 23 and July 4, 1991. Entered into force July 4, 1991.

2. Memorandum on cooperation in soil and water conservation under the guidelines for a cooperative program in the agricultural sciences. Signed at Washington October 5, 1992. Entered into force October 5, 1992.

3. Agreement on technical cooperation in conservation of flora and fauna. Signed April 7, 1999. Entered into force April 7, 1999.

Consular

1. Agreement regarding passport validity. Effected by exchange of letters of August 26 and November 13, 1998. Entered into force December 10, 1998.

Customs

1. Agreement for technical assistance in customs operations and management, with attachment. Signed May 14 and June 4, 1991. Entered into force June 4, 1991.

2. Agreement on TECRO/AIT carnet for the temporary admission of goods. Signed June 25, 1996. Entered into force June 25, 1996.

Education and Culture

1. Agreement amending the agreement for financing certain educational and cultural exchange programs of April 23, 1964. Effected by exchange of letters at Taipei April 14 and June 4, 1979. Entered into force June 4, 1979.

2. Agreement concerning the Taipei American School, with annex. Signed at Taipei February 3, 1983. Entered into force February 3, 1983.

Energy

1. Agreement relating to the establishment of a joint standing committee on civil nuclear cooperation. Signed at Taipei October 3, 1984. Entered into force October 3, 1984.

2. Agreement amending and extending the agreement of October 3, 1984, relating to the establishment of a joint standing committee on civil nuclear cooperation. Signed October 19, 1989. Entered into force October 19, 1989.

3. Agreement abandoning in place in Taiwan the Argonaut Research Reactor loaned to National Tsing Hua University. Signed November 28, 1990.

4. Agreement Amending and Extending the Agreement of October 3, 1984, as amended and extended, relating to the establishment of a joint standing committee on civil nuclear cooperation. Signed October 3, 1994. Entered into force October 3, 1994.

5. Agreement concerning safeguards arrangements for nuclear materials transferred from France to Taiwan. Effected by exchange of letters February 12 and May 13, 1993. Entered into force May 13, 1993.

6. Agreement relating to participation in the USNRC program of severe accident research, with appendix. Signed February 18 and June 24, 1993. Entered into force June 24, 1993; effective January 1, 1993.

7. Agreement regarding participation in the Second USNRC International Piping Integrity Research Group Program, with addendum. Signed at Arlington and Washington February 7 and June 30, 1994. Entered into force June 30, 1994.

8. Memorandum of Agreement for release of an Energy and Power Evaluation Program (ENPEP) computer software package. Signed January 25 and February 27, 1995. Entered into force February 27, 1995.

9. Agreement relating to the participation in the USNRC program of severe accident research. Signed June 26 and 30, 1997. Entered into force June 30, 1997, effective January 1, 1997.

10. Agreement relating to participation in the USNRC's program of thermal-hydraulic code applications and maintenance. Signed January 5 and June 26, 1998. Entered into force June 26, 1998.

11. Agreement regarding terms and conditions for the acceptance of foreign research reactor spent nuclear fuel at the Department of Energy's Savannah River site. Signed December 28, 1998 and February 25, 1999. Entered into force February 25, 1999.

12. Agreement in the area of probabilistic risk assessment research. Signed July 20 and December 27, 1999. Entered into force January 1, 1999.

Environment

1. Agreement for technical cooperation in the field of environmental protection, with implementing arrangement. Signed June 21, 1993. Entered into force June 21, 1993.

2. Agreement extending the agreement of June 21, 1993 for technical cooperation in the field of environmental protection. Effected by exchanges of letters June 30 and July 20 and 30, 1998. Entered into force July 30, 1998, effective June 21, 1998.

Health

1. Guidelines for a cooperative program in the biomedical sciences. Signed May 21, 1984. Entered into force May 21, 1984.

2. Guidelines for a cooperative program in food hygiene. Signed January 15 and 28, 1985. Entered into force January 28, 1985.

1. Agreement amending the 1984 guidelines for a cooperative program in the biomedical sciences, with attachment. Signed April 20, 1989. Entered into force April 20, 1989.

4. Agreement amending the 1984 guidelines for a cooperative program in the biomedical sciences, as amended, with attachment. Signed August 24, 1989. Entered into force August 24, 1989.

5. Guidelines for a cooperative program in public health and preventive

medicine. Signed at Arlington and Washington June 30 and July 19, 1994. Entered into force July 19, 1994.

6. Agreement for technical cooperation in vaccine and immunization-related activities, with implementing arrangement. Signed at Washington October 6 and 7, 1994. Entered into force October 7, 1994.

7. Agreement regarding the mutual exchange of information on medical devices, including quality systems requirements inspectional information. Effected by exchange of letters January 9, 1998. Entered into force January 9, 1998.

Intellectual Property

1. Agreement concerning the protection and enforcement of rights in audiovisual works. Effected by exchange of letters at Arlington and Washington June 6 and 27, 1989. Entered into force June 27, 1989.

2. Understanding concerning the protection of intellectual property rights. Signed at Washington June 5, 1992. Entered into force June 5, 1992.

3. Agreement for the protection of copyrights, with appendix. Signed July 16, 1993. Entered into force July 16, 1993.

4. Memorandum of understanding regarding the extension of priority filing rights for patent and trademark applications. Signed April 10, 1996. Entered into force April 10, 1996.

Judicial Assistance

1. Memorandum of understanding on cooperation in the field of criminal investigations and prosecutions. Signed at Taipei October 5, 1992. Entered into force October 5, 1992.

Labor

1. Guidelines for a cooperative program in labor affairs. Signed December 6, 1991. Entered into force December 6, 1991.

2. Guidelines for a cooperative program in labor mediation and alternative dispute resolution. Signed April 7, 1995. Entered into force April 7, 1995.

Mapping

1. Agreement concerning mapping, charting, and geodesy cooperation. Signed November 28, 1995. Entered into force November 28, 1995.

Maritime

1. Agreement concerning mutual implementation of the 1974 Convention for the safety of life at sea. Effected by exchange of letters at Arlington and Washington August 17 and September 7, 1982. Entered into force September 7, 1982.

2. Agreement concerning mutual implementation of the 1969 international convention on tonnage measurement. Effected by exchange of letters at Arlington and Washington May 13 and 26, 1983. Entered into force May 26, 1983.

3. Agreement concerning mutual implementation of the protocol of 1978 relating to the 1974 international convention for the safety of life at sea. Effected by exchange of letters at Arlington and Washington January 22 and 31, 1985. Entered into force January 31, 1985.

4. Agreement concerning mutual implementation of the protocol of 1978 relating to the international convention for the prevention of pollution from ships, 1973. Effected by exchange of letters at Arlington and Washington January 22 and 31, 1985. Entered into force January 31, 1985.

5. Agreement concerning mutual implementation of the 1966 international convention on load lines. Effected by exchange of letters at Arlington and Washington March 26 and April 10, 1985. Entered into force April 10, 1985.

6. Agreement concerning the operating environment for ocean carriers. Effected by exchange of letters at Washington and Arlington October 25 and 27, 1989. Entered into force October 27, 1989.

Military Sales

1. Agreement for foreign military sales financing by the authorities on Taiwan. Signed January 4 and July 12, 1999. Entered into force July 12, 1999.

Postal

1. Agreement concerning establishment of INTELPOST service. Effected by exchange of letters at Arlington and Washington April 19 and November 26, 1990. Entered into force November 26, 1990.

2. International business reply service agreement, with detailed regulations. Signed at Washington February 7, 1992. Entered into force February 7, 1992.

Privileges and Immunities

1. Agreement on privileges, exemptions and immunities, with addendum. Signed at Washington October 2, 1980. Entered into force October 2, 1980.

2. Agreement governing the use and disposal of vehicles imported by the American Institute in Taiwan and its personnel. Signed at Taipei April 21, 1986. Entered into force April 21, 1986.

Scientific & Technical Cooperation

1. Agreement on scientific cooperation. Effected by exchange of letters at Arlington and Washington on September 4, 1980. Entered into force September 4, 1980.

2. Agreement concerning renewal and extension of the 1980 agreement on scientific cooperation. Signed March 10, 1987. Entered into force March 10, 1987.

3. Guidelines for a cooperative program in atmospheric research. Signed May 4, 1987. Entered into force May 4, 1987.

4. Agreement for technical assistance in dam design and construction, with appendices. Signed August 24, 1987. Entered into force August 24, 1987.

5. Agreement for a cooperative program in the sale and exchange of technical, scientific, and engineering information. Signed November 17, 1987. Entered into force November 17, 1987.

6. Agreement for technical cooperation in meteorology and forecast systems development, with implementing arrangements. Signed June 5 and 28, 1990. Entered into force June 28, 1990.

7. Agreement extending the agreement of November 17, 1987, for a cooperative program in the sale and exchange of technical, scientific and engineering information. Signed August 8, 1990. Entered into force August 8, 1990.

8. Cooperative program on Hualien soil-structure interaction experiment. Signed September 28, 1990.

9. Agreement for technical cooperation in geodetic research and use of advanced geodetic technology, with implementing arrangement. Signed January 11 and February 21, 1991. Entered into force February 21, 1991.

10. Cooperative program in highway-related sciences. Signed October 30, 1990 and January 7, 1992. Entered into force January 7, 1992.

11. Agreement amending and extending the agreement of August 24, 1987, for technical assistance in dam design and construction.

*Name changed to Agreement for Technical Assistance in Areas of Water Resource Development. Signed May 11 and June 9, 1992. Entered into force June 9, 1992.

12. Agreement for technical cooperation in seismology and earthquake monitoring systems development, with implementing arrangement. Signed July 22 and 24, 1992. Entered into force July 24, 1992.

13. Agreement amending the Agreement of August 24, 1987 for technical assistance in areas of water resource development. Signed August 30 and September 3, 1996. Entered into force September 3, 1996.

14. Agreement concerning joint studies on reservoir sedimentation and sluicing, including computer modeling. Signed February 14 and March 8, 1996. Entered into force March 8, 1996.

15. Guidelines for a cooperative program in physical sciences. Signed January 2 and 10, 1997. Entered into force January 10, 1997.

16. Agreement for scientific and technical cooperation in ocean climate research. Signed February 18, 1997. Entered into force February 18, 1997.

17. Agreement amending the agreement of August 24, 1987 for technical assistance in areas of water resource development. Signed October 14, 1997. Entered into force October 14, 1997.

18. Agreement for technical cooperation in scientific and weather technology systems support. Signed October 22 and November 5, 1997. Entered into force November 5, 1997.

19. Agreement for technical cooperation associated with establishment of advanced operational aviation weather systems. Signed February 10 and 13, 1998. Entered into force February 13, 1998.

20. Agreement for technical cooperation associated with development, launch and operation of a constellation observing system for meteorology, ionosphere and climate. Signed May 29 and June 30, 1999. Entered into force June 30, 1999.

Security of Information

1. Protection of information agreement. Signed September 15, 1981. Entered into force September 15, 1981.

Taxation

1. Agreement concerning the reciprocal exemption from income tax of income derived from the international operation of ships and aircraft. Effected by exchange of letters at Taipei May 31, 1988. Entered into force May 31, 1988.

2. Agreement for technical assistance in tax administration, with appendices. Signed August 1, 1989. Entered into force August 1, 1989.

Trade

1. Agreement concerning trade matters, with annexes. Effected by exchange of letters at Arlington and Washington October 24, 1979. Entered into force October 24, 1979; effective January 1, 1980.

2. Agreement concerning trade matters. Effected by exchange of letters at Arlington and Washington December 31, 1981. Entered into force December 31, 1981.

3. Agreement concerning measures that the CCNAA will undertake in connection with implementation of the GATT Customs Valuation Code. Effected by exchange of letters at Bethesda and Arlington August 22, 1986. Entered into force August 22, 1986.

4. Agreement concerning the export performance requirement affecting investment in the automotive sector. Effected by exchange of letters at Washington and Arlington October 9, 1986. Entered into force October 9, 1986.

5. Agreement concerning beer, wine and cigarettes. Signed at Washington December 12, 1986. Entered into force December 12, 1986; effective January 1, 1987.

6. Agreement implementing the agreement of December 12, 1986 concerning beer, wine and cigarettes. Effected by exchange of letters at Taipei April 29, 1987. Entered into force April 29, 1987; effective January 1, 1987.

7. Agreement concerning trade in whole turkeys, turkey parts, processed turkey products and whole ducks, with memorandum of understanding. Effected by exchange of letters at Arlington and Washington March 16, 1989. Entered into force March 16, 1989.

8. Agreement concerning the protection of trade in strategic commodities and technical data, with memorandum of understanding. Effected by exchange of letters at Arlington and Washington December 4, 1990 and April 8, 1991. Entered into force April 8, 1991.

9. Administrative arrangement concerning the textile visa system. Effected by exchange of letters at Arlington and Washington April 18 and May 1, 1991. Entered into force May 1, 1991.

10. Agreement regarding new requirements for health warning legends on cigarettes sold in the territory represented by CCNAA. Effected by exchange of letters at Washington and Arlington October 7 and 16, 1991. Entered into force October 16, 1991.

11. Memorandum of understanding concerning a new quota arrangement for cotton and man-made fiber trousers. Signed at Washington December 18, 1992. Entered into force December 18, 1992.

12. Memorandum of understanding on the exchange of information concerning commodity futures and options matters, with appendix. Signed January 11, 1993. Entered into force January 11, 1993.

13. Agreement concerning a framework of principles and procedures for consultations regarding trade and investment, with annex. Signed at Washington September 19, 1994. Entered into force September 19, 1994.

14. Visa arrangement concerning textiles and textile products. Effected by exchange of letters of April 30 and September 3 and 23, 1997. Entered into force September 23, 1997.

15. Agreement concerning trade in cotton, wool, man-made fiber, silk blend and other non-cotton vegetable fiber textile products, with attachment. Effected by exchange of letters December 10, 1997. Entered into force December 10, 1997; effective January 1, 1998.

16. Agreed minutes on government procurement issues. Signed December 17, 1997. Entered into force December 17, 1997.

17. Understanding concerning bilateral negotiations on the WTO accession of the separate customs territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei) and the United States. Signed February 20, 1998. Entered into force February 20, 1998.

18. Agreement on mutual recognition for equipment subject to electro-magnetic compatibility (EMC) regulations. Signed March 16, 1999. Entered into force March 16, 1999.

19. Agreement concerning the Asia Pacific Economic Cooperation mutual recognition arrangement for conformity assessment of telecommunications equipment (APEC Telecon MRA). Signed March 16, 1999. Entered into force March 16, 1999.

[FR Doc. 00–32936 Filed 12–26–00; 8:45 am]
BILLING CODE 0000–00–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Initiatives Advisory Panel—Notice of Change

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that the open session for the meeting of the Leadership Initiatives Advisory Panel, Folk & Traditional Arts section (Infrastructure Initiative category), to the National Council on the Arts, previously announced for 9 a.m.–10:30 a.m. on January 11, 2001 will be held on the 11th from 12 p.m. to 1 p.m. The meeting will be held in Room 708 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Dated: December 19, 2000.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 00–32957 Filed 12–26–00; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Intent to Seek Approval to Establish an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by February 26, 2001 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR ADDITIONAL INFORMATION OR COMMENTS: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, VA 22230; telephone (703) 292–7556; or send email to splimpto@nsf.gov. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: Medical Clearance Process for Deployment to Antarctica

OMB Number: 3145–NEW.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to establish an information collection for three years.

Abstract

A. Proposed Project

All individuals who anticipate deploying to Antarctica and to certain regions of the Arctic under the auspices of the United States Antarctic Program are required to take and pass a rigorous physical examination prior to deploying. The physical examination includes a medical history, medical examination, a dental examination and for those persons planning to winter over in Antarctica a psychological examination is also required. The requirement for this determination of physical status is found in 42 U.S.C. 1870 (Authority) and 62 FR 31522, June 10, 1997 (Source), unless otherwise noted. This part sets forth the procedures for medical screening to determine whether candidates for participation in the United States Antarctic [[Page216]] Program (USAP) are physically qualified and psychologically adapted for assignment or travel to Antarctica. Medical screening examinations are necessary to determine the presence of any physical or psychological conditions that would threaten the health or safety of the candidate or other USAP participants or that could not be effectively treated by the limited medical care capabilities in Antarctica.

(b) Presidential Memorandum No. 6646 (February 5, 1982) (available from the National Science Foundation, Office of Polar Programs, room 755, 4201 Wilson Blvd., Arlington, VA 22230) sets forth the National Science Foundation's overall management responsibilities for the entire United States national program in Antarctica.

B. Use of the Information

1. *Form NSF–1420,* National Science Foundation—Polar Physical Examination

(Antarctica/Arctic/Official Visitors) Medical History, will be used by the individual to record the individual's family and personal medical histories. It is a five-page form that includes the individual's and the individual's emergency point-of-contact's name, address, and telephone numbers. It contains the individual's email address, employment affiliation and dates and locations of current and previous polar deployments. It also includes a signed certification of the accuracy of the information and understandings of refusal to provide the information or providing false information. The agency's contractor's reviewing physician and medical staff complete the sections of the form that indicated when the documents were received and whether or not the person qualified for polar deployment, in which season qualified to deploy and where disqualified the reasons.

2. *Form NSF–1421,* Polar Physical Examination—Antarctica/Arctic, will be used by the individuals, physician to document specific medical examination results and the overall status of the individual's health. It is a two-page form which also provides for the signatures of both the patient and the examining physician, as well as contact information about the examining physician. Finally, it contains the name, address and telephone number of the agency's contractor that collects and retains the information.

3. *Form NSF–1422,* National Science Foundation Polar Physical Examination

(Antarctica/Arctic/Official Visitors) Medical History Interval Screening, will only be used by individuals who are under the age of 40 and who successfully took and passed a polar examination the previous season or not more than 24 months prior to current deployment date. It allows the otherwise healthy individual to update his or her medical data without having to take a physical examination every year as opposed to those over 40 years of age who must be examined annually.

4. *Form NSF–1423,* Polar Dental Examination—Antarctica/Arctic/Official Visitors, will be used by the examining dentist to document the status of the individual's teeth and to document when the individual was examined. It will also be used by the contractor's reviewing dentist to document whether or not the individual is dentally cleared to deploy to the polar regions.

5. *Medical Waivers:* Any individual who is determined to be not physically qualified for polar deployment may request an administrative waiver of the medical screening criteria. This information includes signing a Request for Waiver that is notarized or otherwise legally acceptable in accordance with penalty of perjury statutes, obtaining an Employer Statement of Support. Individuals on a case-by-case basis may also be required to submit additional medical documentation and a letter from the individual's physician(s) regarding the individual's medical suitability for Antarctic deployment.

6. *Other information requested:* In addition to the numbered forms and other information mentioned above, the USAP medical screening package includes the following:

—the Medical Risks for NSF-Sponsored Personnel Traveling to Antarctica—multi-copy form

—the NSF Privacy Notice

—the NSF Medical Screening for Blood-borne Pathogens/Consent for HIV Testing (multi-copy)

—the NSF Authorization for Treatment of Field-Team Member/Participant Under the Age of 18 Years (multi-copy).

This should only be sent to the individuals who are under 18 years of age.

—the Dear Doctor and Dear Dentist letters, which provide specific laboratory and x-ray requirements, as well as other instructions.

7. *There are two other, non-medical forms included in the mailing:*

—the Personal Information Form—NSF Form Number 1424 includes a Privacy Act Notice. This form is used to collect information on current address and contact numbers, date and place of birth, nationality, citizenship, social security number, passport number, emergency point of contact information, travel dates, clothing sizes so that we may properly outfit those individuals who deploy, work-site information and prior deployment history.

—the Participant Notification—Important Notice for Participants in the United States Antarctic Program. This form provides information on the laws, of the nations through which program participants must transit in route to Antarctica, regarding the transport, possession and use of illegal substances and the possibility of criminal prosecution if caught, tried and convicted.

Estimate of Burden: Public reporting burden for this collection of information varies according to the overall health of the individual, the amount of research required to complete the forms, the time it takes to make an appointment, take the examination and schedule and complete any follow-up medical, dental or psychological requirements and the completeness of the forms submitted. The estimated time is up to six weeks from the time the individual receives the forms until he or she is notified by the contractor of their final clearance status. An additional period of up to eight weeks may be required for the individual who was disqualified to be notified of the disqualification, to request and receive the waiver packet, to obtain employer support and complete the waiver request, to do any follow-up testing, to return the waiver request to the contractor plus any follow-up information, for the contractor to get the completed packet to the National Science Foundation, for the NSF to make and promulgate a decision.

Respondents: All individuals deploying to the Antarctic and certain Arctic areas under the auspices of the United States Antarctic Program must complete these forms. There are approximately 3,000 submissions per year, with a small percentage (c.3%) under the age of 40 who provide annual submissions but with less information.

Estimated Number of Responses per Form: Responses range from 2 to approximately 238 responses.

Estimated Total Annual Burden on Respondents: The total annual burden in hours, broken down by form cannot yet be measured accurately because of the time it takes to obtain the information which depends on the number of illnesses, surgeries, diagnoses, *etc.*, the individual and family members have had.

Frequency of Responses: Individuals must complete the forms annually to be current within 12 months of their anticipated deployment dates. Depending on individual medical status some persons may require additional laboratory results to be current within two to six-weeks of anticipated deployment.

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 of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (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.

Dated: December 21, 2000.

Suzanne H. Plimpton,

Reports Clearance Officer.

[FR Doc. 00–32951 Filed 12–26–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–14526; License No. 37–00062–07; EA No. 00–086]

In the Matter of Department of Veterans Affairs Medical Center Philadelphia, Pennsylvania; Order Imposing a Civil Monetary Penalty

I

Philadelphia Department of Veterans Affairs Medical Center (PVAMC) (Licensee) is the holder of Byproduct Materials License No. 37–00062–07 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) on January 16, 1979, and most recently renewed by the NRC on March 31, 1994 (to expire on March 31, 2004). The License authorizes the Licensee to possess and use certain byproduct materials in accordance with the conditions specified therein at its facility in Philadelphia, Pennsylvania.

II

On April 16, 1999, the U.S. Merit Systems Protection Board (MSPB) issued an initial decision (which became a final decision on May 21, 1999) finding that the PVAMC discriminated against a former research nurse at the facility for raising safety concerns. Specifically, the MSPB found, in part, that the former research nurse was subjected to intolerable working conditions for raising safety concerns. Based on this MSPB finding, the NRC concluded that there was a violation of NRC regulations at 10 CFR 30.7. As a result, a written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of $5,500 was served upon the Licensee by letter dated July 20, 2000. The Notice states the nature of the violation, the provisions of the NRC requirement that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in a letter, dated August 29, 2000. In its response, the Licensee denied the violation and requested that the NRC withdraw the violation and rescind the associated civil penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the staff does not believe that the Licensee has provided an adequate basis for withdrawal of the violation or for rescission of the associated civil penalty. Therefore, a civil penalty in the amount of $5,500 should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It Is Hereby Ordered That:*

The Licensee pay a civil penalty in the amount of $5,500 within 30 days of the date of this Order, in accordance with NUREG/BR–0254. In addition, at the time of making the payment, the Licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Associate General Counsel for Hearings, Enforcement and Administration at the same address, and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, and

(b) Whether, on the basis of such violation, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated this 14th day of December 2000.

R.W. Borchardt,

Director, Office of Enforcement.

Appendix

Evaluations and Conclusion

On July 20, 2000, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of $5,500 was issued to the Licensee for a violation involving the discrimination of a research nurse for engaging in protected activities. The violation was based on the NRC review of the decision, dated April 16, 1999, of the U. S. Merit Systems Protection Board (MSPB). The MSPB had, in part, concluded that the research nurse was subjected to intolerable working conditions for raising safety concerns. Based on the MSPB finding and a predecisional enforcement conference (PEC) with PVAMC on May 17, 2000, the NRC concluded that the intolerable working conditions constituted discrimination against the research nurse for raising safety concerns.

The Licensee responded to the Notice in a letter, dated August 29, 2000. In its response, the Licensee denied that the violation occurred and requested that the NRC withdraw the violation and rescind the proposed civil penalty. The NRC's evaluation and conclusion regarding the Licensee's response are as follows:

1. Restatement of the Violation

10 CFR 30.7(a) states, in part, discrimination by a Commission Licensee against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in Section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

10 CFR 30.7(a)(1)(i) provides that protected activities include, but are not limited to, providing the Commission or his or her employer information about alleged violations of either the Atomic Energy Act or the Energy Reorganization Act named in 10 CFR30.7(a)or possible violations of requirements imposed under either of those statutes.

Contrary to the above, between April 1997 and May 1998, a former research nurse was subjected to a hostile work environment for engaging in a protected activity. Specifically, after the individual raised (to the FDA in April 1997 and the NRC in June 1997) issues regarding the inadequacy of the human subjects consent forms used by the participants in a research study (as required by 10 CFR 35.6 and 10 CFR 35.7), she was isolated by her supervisor and there were significant negative changes to her working conditions.

Summary of the Licensee's Response

The Licensee, in its response, denied that the violation occurred. In particular, the Licensee denied that a supervisor retaliated against the former research nurse by creating a hostile work environment because that employee identified safety issues.

While denying the creation of a hostile work environment for the former research nurse because she raised safety concerns, the licensee agreed that the working relationships and atmosphere in the clinical research laboratory were not optimal in 1997 and 1998. However, the Licensee contended that the nurse's raising of safety concerns did not contribute to this poor environment. In support of this contention, the Licensee responded to the specific examples that were used to describe the hostile work environment as listed in the NRC letter, dated July 20, 2000, transmitting the Notice. Specifically;

1. *Threats of dismissal of the nurse by her supervisor*—The Licensee noted that the supervisor denied that he threatened to dismiss the research nurse, although they had one conversation where he warned the nurse that one of the two nurses (under that individual's supervision) "may have to go" unless they could work together.

2. *Isolation of the nurse from her supervisor*—The Licensee noted that it was the supervisor's recollection that the research nurse voluntarily, without permission or request from her supervisor, moved her work space from her shared office to an exam room in late 1996 or early 1997. The Licensee also stated that it was the supervisor's contention that the research nurse kept the door closed and locked of her own volition, thus creating her own isolation from the staff.

3. *Failure to include the nurse in work discussions*—The Licensee noted that although the supervisor held unscheduled, informal morning meetings with the two nurses to discuss work and non-work related topics, the research nurse in question had informed the supervisor she did not want to participate in non-work related discussions. The Licensee also indicated that the supervisor had stated that the research nurse was not required to attend the meetings after her statement, but that she should have been able to hear the discussions if the doors to the offices were open. The Licensee concluded that the research nurse was not part of the work discussions because she chose to not attend those discussions.

4. *Accusation of criminal activity by the nurse in May 1997*—The Licensee denied that criminal charges were filed against the research nurse. Rather, the Licensee contends that a preliminary police report was filed regarding missing files and the report stated that it was not clear if the files "had been taken by one of the employee (sic)" (the research nurse) who was on annual leave at the time the report was filed.

5. *Insubordination during an FDA inspection*—The Licensee agreed that the supervisor considered the research nurse's actions during the FDA audit (namely, volunteering information to the FDA auditors) as insubordination. However, the Licensee stated that the supervisor did not stop the nurse from talking about issues to the regulatory agencies. The Licensee further stated that no action (intimidation, threats, or impedance from making future disclosures) was taken against the research nurse after the FDA audit.

Principally for these reasons, the Licensee requested that the violation be withdrawn and the civil penalty be rescinded.

NRC's Evaluation of the Licensee's Response

The NRC has carefully reviewed the Licensee's response to the Notice of Violation and Proposed Imposition of Civil Penalty and has concluded after further review, including review of the MSPB finding, that the violation did occur as stated in the Notice in that the employee was subjected to a hostile work environment as a result of raising safety concerns. The Licensee did not provide any new or compelling information in its response to change the NRC's conclusion that the violation occurred.

In determining whether a hostile work environment existed, the NRC relied heavily on the MSPB finding in this area. The MSPB

finding indicates that based on the testimony of Dr. Dunkman and his demeanor during testimony, the Administrative Judge (AJ) was persuaded that he was extremely upset with the appellant for having his study temporarily suspended. During the PEC the staff also observed that Dr. Dunkman still appeared upset with the complainant for this action and did not seem to have an understanding that telling her she should not give an FDA inspector information was wrong. The testimony and the June 9, 1997 memo that Dr. Dunkman authored made it clear to the AJ that he found her disloyal and tried to get rid of her. Accordingly, the AJ found that the protected disclosures did contribute significant changes to her working conditions, *i.e.*, her working conditions became intolerable.

The Licensee contends the specific areas cited did not constitute a hostile work environment. Specifically, that (1) the supervisor denied threatening to dismiss the research nurse, (2) the research nurse was not isolated by her supervisor but isolated herself, (3) it was the research nurse's own decision to not attend routine meetings, (4) no criminal charges were filed against the research nurse regarding the missing files, and (5) no action (intimidation, threats, or impedance from making future disclosures) was taken against the research nurse after the FDA audit wherein she volunteered information to the FDA.

The NRC has determined, based on the MSPB finding and information gathered at the PEC, that the protected disclosures resulted in the complainant's supervisor becoming increasingly angry at her and did contribute to significant changes to her working conditions, *i.e.*, her working conditions became intolerable. The NRC recognizes that the research nurse may have isolated herself from her supervisor and the other nurse in the laboratory. Nonetheless, it was clear that the supervisor failed to address that isolation or include her in work related discussions with the other nurse. In addition, he made statements that could reasonably be construed as a threat of dismissal, he labeled the nurse as "insubordinate" for volunteering information to a regulatory agency, and he tried to terminate her after she raised safety concerns.

The Licensee's response also provided a number of reasons for its disagreement with the MSPB conclusion that the termination of the research nurse was also discriminatory. Since the termination was not part of the violation cited by the NRC in the Notice, dated July 20, 2000, there is no need for the NRC to respond to those Licensee's contentions.

The Licensee also stated that there was an error on page 2 of the NOV in the following statement; "Specifically, after the individual raised (to the FDA in April 1997 and to the NRC in June 1997) issues regarding the inadequacy of the consent forms used by the participants in a research study, there were significant negative changes to her working conditions." The Licensee contends that neither the supervisor nor the management at PVAMC knew about the FDA audit until June 1997. The NRC acknowledges that the Licensee may not have known about issues raised to the FDA until June 1997, but the nurse first made protected disclosures to the Licensee in February 1997. Therefore, this information does not change the NRC's conclusion that the Licensee created a hostile work environment between April 1997 and May 1998, which was based, in part, on the nurse's engagement in protected activities.

2. NRC Conclusion

The NRC has concluded that this violation occurred as stated in the Notice and the Licensee did not provide a sufficient basis for withdrawing the violation or for rescinding the civil penalty. Accordingly, the proposed civil penalty in the amount of $5,500 should be imposed.

[FR Doc. 00–33011 Filed 12–26–00; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Licensing Support System Advisory Review Panel

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Renewal of the Charter of the Licensing Support Network Advisory Review Panel (LSNARP).

SUMMARY: The Licensing Support System Advisory Review Panel was established by the U.S. Nuclear Regulatory Commission as a Federal Advisory Committee in 1989. Its purpose was to provide advice on the fundamental issues of design and development of an electronic information management system to be used to store and retrieve documents relating to the licensing of a geologic repository for the disposal of high-level radioactive waste, and on the operation and maintenance of the system. This electronic information management system was known as the Licensing Support System (LSS). In November, 1998 the Commission approved amendments to 10 CFR part 2 that renamed the Licensing Support System Advisory Review Panel as the Licensing Support Network Advisory Review Panel.

Membership on the Panel continues to be drawn from those interests that will be affected by the use of the LSN, including the Department of Energy, the NRC, the State of Nevada, the National Congress of American Indians, affected units of local governments in Nevada, the Nevada Nuclear Waste Task Force, and a coalition of nuclear industry groups. Federal agencies with expertise and experience in electronic information management systems may also participate on the Panel.

The Nuclear Regulatory Commission has determined that renewal of the charter for the LSNARP until December 14, 2002 is in the public interest in connection with duties imposed on the Commission by law. This action is being taken in accordance with the Federal Advisory Committee Act after consultation with the Committee Management Secretariat, General Services Administration.

FOR FURTHER INFORMATION CONTACT: Andrew L. Bates, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555: Telephone 301–504–1963.

Dated: December 20, 2000.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 00–33009 Filed 12–26–00; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[7590–01P]

Advisory Committee on Reactor Safeguards; Renewal

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of renewal of the Advisory Committee on Reactor Safeguards (ACRS).

SUMMARY: The Advisory Committee on Reactor Safeguards was established by Section 29 of the Atomic Energy Act (AEA) in 1954. Its purpose is to provide advice to the Commission with regard to the hazards of proposed or existing reactor facilities, to review each application for a construction permit or operating license for certain facilities specified in the AEA, and such other duties as the Commission may request. The AEA as amended by PL 100–456 also specifies that the Defense Nuclear Safety Board may obtain the advice and recommendations of the ACRS.

Membership on the Committee includes individuals experienced in reactor operations, management; probabilistic risk assessment; analysis of reactor accident phenomena; design of nuclear power plant structures, systems and components; materials science; and mechanical, civil, and electrical engineering.

The Nuclear Regulatory Commission has determined that renewal of the charter for the ACRS until December 22, 2002 is in the public interest in connection with the statutory responsibilities assigned to the ACRS. This action is being taken in accordance with the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: Andrew L. Bates, Office of the Secretary, NRC, Washington, DC 20555; telephone: (301) 415–1963.

Dated: December 20, 2000.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 00–33008 Filed 12–26–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on February 1–3, 2001, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Friday, November 17, 2000 (65 FR 69578).

Thursday, February 1, 2001

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–10:15 A.M.: Treatment of Uncertainties in the Elements of the PTS Technical Basis Reevaluation Project (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding treatment of uncertainties in the elements of the Pressurized Thermal Shock (PTS) Reevaluation Project.

10:30 A.M.–12 Noon: Siemens S–RELAP5 Appendix K Small-Break LOCA Code (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Siemens Power Corporation regarding the Siemens S–RELAP5 Appendix K Small-Break Loss-of-Coolant Accident (LOCA) Code and the associated NRC staff Safety Evaluation Report. [Note: A portion of this session may be closed to discuss Siemens Power Corporation proprietary information applicable to this matter.]

1 P.M.–2:30 P.M.: Proposed ANS Standard on External-Events PRA (Open)—The Committee will hear presentations by and hold discussions with representatives of the American Nuclear Society (ANS) regarding the proposed ANS Standard on external-events PRA.

2:45 P.M.–4 P.M.: Reprioritization of Generic Safety Issue-152, "Design Basis for Valves that Might be Subjected to Significant Blowdown Loads" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding reprioritization of Generic Safety Issue-152 and the reasons therefor, and related matters.

4 P.M.–5 P.M.: Break and Preparation of Draft ACRS Reports (Open)—Cognizant ACRS members will prepare draft reports, as needed, for consideration by the full Committee.

5 P.M.–7 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Friday, February 2, 2001

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–10 A.M.: Regulatory Effectiveness of the ATWS Rule (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the staff's assessment of the regulatory effectiveness of the Anticipated Transients Without Scram (ATWS) Rule.

10:15 A.M.–11:45 A.M.: Overview of Mixed Oxide Fuel Fabrication Facility (Open)—The Committee will hear presentations by and hold discussions with representatives of the Department of Energy (DOE) and the NRC staff regarding the proposed Mixed Oxide Fuel Fabrication Facility to be constructed at the DOE's Savannah River Plant site.

1 P.M.–2 P.M.: Meeting with the NRC Chairman (Open)—The Committee will meet with the NRC Chairman Meserve to discuss items of mutual interest.

2:15 P.M.–3:15 P.M.: NRC Safety Research Program (Open)—The Committee will discuss the annual ACRS report to the Commission on the NRC Safety Research Program.

3:15 P.M.–3:45P.M.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS.

3:45 P.M.–4 P.M.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

4 P.M.–5 P.M.: Break and Preparation of Draft ACRS Reports (Open)—Cognizant ACRS members will prepare draft reports, as needed, for consideration by the full Committee.

5 P.M.–7 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, February 3, 2001

8:30 A.M.–12:30 P.M.: Proposed ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

12:30 P.M.–1 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 ACRS meetings were published in the **Federal Register** on October 11, 2000 (65 FR 60476). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. James E. Lyons, ACRS, five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting Mr. James E. Lyons prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Mr. James E. Lyons if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) P.L. 92–463, I have determined that it is necessary to close a portion of this meeting noted above to discuss proprietary information per 5 U.S.C. 552b(c)(4).

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 therefor can be obtained by contacting Mr. James E. Lyons (telephone 301–415–7371), between 7:30 a.m. and 4:15 p.m., EST.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the internet at *http://www.nrc.gov/ACRSACNW*.

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., EST, 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 facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: December 20, 2000.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 00–33010 Filed 12–26–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 4, 2000, through December 15, 2000. The last biweekly notice was published on December 13, 2000.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By January 26, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for

leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: September 29, 2000.

Description of amendment request: The proposed amendments would make various changes to the Technical Specifications (TS) to support a change in fuel vendors from Siemens Power Corporation to General Electric and a transition to the use of GE 14 fuel.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Evaluation of effect on the probability of an accident previously evaluated:

1. *Administrative Changes.* The revisions to Current Technical Specifications (CTS) Sections 2.1.B, "Thermal Power, High Pressure and High Flow," and 3.6.A, "Recirculation Loops," regarding the Minimum Critical Power Ratio (MCPR) Safety Limit, the changes to CTS Section 6.9.A.6.b, "Core Operating Limits Report," and the changes to the definitions are administrative changes and will not affect the probability of an accident previously evaluated. These changes do not affect plant systems, structures, or components. No plant mitigating systems or functions are affected by these changes.

2. *Control Rod Operability and Scram Insertion Times Methodology.* The changes to CTS Sections 3/4.3.C, "Control Rod Operability," 3/4.3.D, "Maximum Scram Insertion Times," 3/4.3.E, "Average Scram Insertion Times," 3/4.3.F, "Group Scram Insertion Times," 3/4.3.G, "Control Rod Scram Accumulators," 3/4.3.H, "Control Rod Coupling," and 3/4.3.I, "Control Rod Position Indication System," revise the methodology for determining rod operability and control rod scram time requirements for operation. These changes do not physically alter plant systems, structures or components and therefore do not affect the probability of an accident previously evaluated.

3. *Control Rod Scram Times.* The addition of required scram times for General Electric (GE) analyzed cores does not physically alter plant systems, structures or components and therefore does not affect the probability of an accident previously evaluated.

4. *Rod Worth Minimizer (RWM).* The revision to CTS Section 3/4.3.L, "Rod Worth Minimizer," lowers the power level at which the analyzed rod position sequence must be followed. This change does not affect plant systems, structures, or components. Because there is no possible control rod configuration that results in a control rod worth that could exceed the 280 cal/gram fuel design limit, the probability of an accident is not increased.

5. *Transient Linear Heat Generation Rate (TLHGR).* The revisions to CTS Section 3.11.B, "*Transient Linear Heat Generation Rate,*" add fuel thermal limits that are monitored to ensure that TLHGR is not violated. These changes do not physically alter plant systems, structures or components and therefore do not affect the probability of an accident previously evaluated.

Evaluation of the effect on the consequences of an accident previously evaluated.

1. *Administrative Changes.* The revisions to CTS Sections 2.1.B and 3.6.A, regarding the MCPR Safety Limit, the changes to CTS Section 6.9.A.6.b regarding the COLR, and the changes to

the definitions are administrative changes and will not affect the consequences of an accident previously evaluated. These changes do not affect plant systems, structures, or components. No plant mitigating systems or functions are affected by these changes.

2. *Control Rod Operability and Scram Insertion Times Methodology.* The revisions to CTS Sections 3/4.3.C, 3/4.3.D, 3/4.3.E, 3/4.3.F, 3/4.3.G, 3/4.3.H, and 3/4.3.I are made to ensure that appropriate scram times are reflected in the TS for GE methodology. The scram timing requirements ensure that the negative reactivity insertion rate assumed in the safety analyses is preserved. CTS methods ensure this by limiting scram times for individual rods, the average scram time, and local scram times (*i.e.,* a four control rod group). The proposed revisions, based on the Improved Technical Specification (ITS) methods, ensure this by limiting the scram times for individual rods, the number of slow rods, and the number of adjacent slow rods. Each of these methods ensure equivalent protection of the assumed reactivity insertion rate. Therefore, there is no change to the consequences of a previously evaluated accident or transient.

In addition, numerous changes to the control rod operability and scram timing requirements were made to reflect the ITS approach to these requirements. These revisions consist of administrative changes, more restrictive changes, and less restrictive changes. The discussion of each of these categories is provided below.

Administrative changes. These consist of restructuring, interpretation, rearranging of requirements, and other changes not substantially revising an existing requirement. Therefore, these changes do not affect the consequences of an accident previously evaluated.

More restrictive changes. These consist of changes resulting in added restrictions or eliminating flexibility. The more restrictive requirements continue to ensure that process variables, structures, systems and components are maintained consistent with the safety analyses and licensing basis. Therefore, these changes do not involve an increase in the consequences of an accident previously evaluated.

Less restrictive changes. The less restrictive changes involve increasing the time to complete actions, increasing the time intervals between required surveillances, and deleting or revising the applicability of certain actions. The time to complete actions and the surveillance frequencies are not assumed in the analysis of the consequences of any accidents previously evaluated, and therefore, cannot increase the consequences of such accidents. The deleted or revised actions are not assumed in the safety analyses for any evaluated accidents. The revised scram timing methods will result in operating thermal limits that will maintain the identical safety limits. Thus, the consequences of the evaluated accidents will not increase.

3. *Control Rod Scram Times.* Cycle-specific analyses that use the GE methodology scram times will meet all of the same safety limit acceptance criteria. Additionally, for the non-cycle specific events in the Updated Final Safety Analysis Report (UFSAR), GE has determined that there is negligible impact on results of events which are not analyzed on a cycle-specific basis. Therefore, there is no change to the consequences of a previously evaluated accident or transient.

4. *RWM.* The RWM enforces the analyzed rod position sequence to ensure that the initial conditions of the Control Rod Drop Accident (CRDA) analysis are not violated. Compliance with the analyzed rod position sequence, and operability of the RWM is required in Mode 1, "Power Operation," and Mode 2, "Startup," when thermal power is less than or equal to 10% Rated Thermal Power (RTP). When thermal power is greater than 10% RTP, there is no possible control rod configuration that results in a control rod worth that could exceed the 280 cal/gm fuel design limit during a CRDA. Because the fuel design limit of 280 cal/gm is not exceeded, this change to lower the Low Power Setpoint (LPSP) does not increase the consequences of an accident previously evaluated.

5. *TLHGR.* The changes to this section are analytical in nature and do not affect plant systems, structures, or components. The changes in this section revise the description of fuel thermal limits that are monitored to ensure that the TLHGR limit is not violated. The TLHGR protects the fuel from 1% plastic strain and fuel centerline melt. Because these criteria have not changed, the consequences of an accident have not changed.

Therefore, the proposed changes to the CTS do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

1. *Administrative Changes.* The revisions to CTS Sections 2.1.B and 3.6.A, regarding the MCPR Safety Limit, the changes to CTS Section 6.9.A.6.b regarding the COLR, and the changes to the definitions are administrative changes and will not create the possibility of a new or different kind of accident. These changes do not affect plant systems, structures, or components. No plant mitigating systems or functions are affected by these changes.

2. *Control Rod Operability and Scram Insertion Times Methodology.* The changes to CTS Sections 3/4.3.C, 3/4.3.D, 3/4.3.E, 3/4.3.F, 3/4.3.G, 3/4.3.H, and 3/4.3.I revise the control rod operability and scram time requirements for operation. These changes do not physically alter plant systems, structures or components and therefore do not create the possibility of a new or different kind of accident.

3. *Control Rod Scram Times.* These changes do not physically alter plant systems, structures or components and therefore do not create the possibility of a new or different kind of accident.

4. *RWM.* The revisions to CTS Section 3/4.3.L lower the power level at which the analyzed rod position sequence must be followed. This change does not affect plant systems, structures, or components. Because there is no possible control rod configuration that results in a control rod worth that could exceed the 280 cal/gm fuel design limit, no new or different type of accident is created.

5. *TLHGR.* The revisions to CTS Section 3.11.B revise the description of fuel thermal limits that are monitored to ensure that TLHGR is not violated. These changes are analytical in nature and do not affect plant systems, structures, or components. Therefore, the changes do not create the possibility of a new or different kind of accident.

Therefore, the proposed changes to the CTS do not create the possibility of a new or different kind of accident from any previously evaluated.

Does the proposed change involve a significant reduction in a margin of safety?

1. *Administrative Changes.* The revisions to CTS Sections 2.1.B and 3.6.A, regarding the MCPR Safety Limit, the changes to CTS Section 6.9.A.6.b, regarding the COLR, and the changes to the definitions are administrative changes and will not reduce the margin of safety. These changes do not affect plant systems, structures, or components. No plant mitigating systems or functions are affected by these changes.

2. *Control Rod Operability and Scram Insertion Times Methodology.* The revisions to the CTS control rod operability and scram insertion times

ensure that the negative reactivity insertion rate assumed in the safety analyses is preserved. CTS methods ensure this by limiting scram times for individual rods, the average scram time, and the local scram times (*i.e.*, a four control rod group). ITS methods ensure this by limiting the scram times for individual rods, the number of slow rods, and the number of adjacent slow rods. Each of these methods ensure equivalent protection of the assumed reactivity insertion rate. Therefore, the changes do not involve a reduction in the margin of safety.

In addition, numerous changes to the control rod operability and scram timing requirements were made to reflect the ITS approach to these requirements. These revisions consist of administrative changes, more restrictive changes, and less restrictive changes. The discussion of each of these categories is provided below.

Administrative Changes. These consist of restructuring, interpretation, and complex rearranging of requirements, and other changes not substantially revising an existing requirement. Therefore, these changes do not affect the margin of safety.

More restrictive changes. These consist of changes resulting in added restrictions or eliminating flexibility. The more restrictive requirements continue to ensure that process variables, structures, systems and components are maintained consistent with the safety analyses and licensing basis. Therefore, these changes do not reduce the margin of safety.

Less restrictive changes. The less restrictive changes involve increasing the time to complete actions, increasing the time intervals between required surveillances, and deleting or revising the applicability of certain actions. The time to complete actions and the surveillance frequencies have been extended for several reasons, including experience showing low probability of failures, the benefit of allowing time to perform actions without undue haste, or due to compensating changes in other actions. The deleted or revised actions are not assumed in the safety analyses for any evaluated accidents. Thus, there is no significant reduction in the margin of safety.

3. *Control Rod Scram Times.* The addition of required scram times for GE analyzed cores based on GE analysis methodology does not involve a reduction in the margin of safety. For GE analyzed cores, cycle-specific analyses using the actual averaged scram times provide MCPR operating limits that will ensure the MCPR safety limit is not violated. Therefore, the fuel remains appropriately protected and no margins of safety are reduced.

4. *RWM.* The RWM enforces the analyzed rod position sequence to ensure that the initial conditions of the CRDA analysis are not violated. Compliance with the analyzed rod position sequence, and operability of the RWM is required in Modes 1 and 2 when thermal power is less than or equal to 10% rated thermal power (RTP). When thermal power is greater than 10% RTP, there is no possible control rod configuration that results in a control rod worth that could exceed the 280 cal/gm fuel design limit during a CRDA. Because the fuel design limit of 280 cal/gm is not exceeded above 10% RTP, this change to reduce the LPSP does not reduce a margin of safety.

5. *TLHGR.* The addition of the ratio of Maximum Fraction of Limiting Power Density (MFLPD) to the Fraction of Rated Thermal Power (FRTP) provides thermal limit protection for GE fuel. This provides equivalent protection to ensure that the TLHGR limit is maintained. Therefore, the revisions to CTS Section 3.11.B will not reduce a margin of safety.

Therefore, these proposed changes to the CTS do not involve a significant reduction in the margin safety.

Proposed Changes to ITS

Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Evaluation of the effect on the probability of an accident previously evaluated.

1. *Administrative Changes.* The revision to Improved Technical Specification (ITS) Section 5.6.5, "Core Operating Limits Report," and the added definitions are purely administrative changes and do not affect the probability or consequences of an accident previously evaluated.

2. *Control Rod Scram Times.* The revision to ITS Table 3.1.4–1, "Control Rod Scram Times," adds scram time requirements for GE analyzed cores. This change does not physically alter plant systems, structures or components and therefore does not affect the probability of an accident previously evaluated.

3. *Average Power Range Monitor (APRM) Gain and Setpoint.* The revisions to ITS Section 3.2.4, "Average Power Range Monitor (APRM) Gain and Setpoint," revise the description of fuel thermal limits that are monitored to ensure the TLHGR is not violated. The changes to this section are analytical in nature and do not affect plant systems, structures, or components and therefore will not affect the probability of an accident previously evaluated.

Evaluation of the effect on the consequences of an accident previously evaluated.

1. *Administrative Changes.* The revision to ITS Section 5.6.5 and the added definitions are purely administrative changes and do not affect the probability or consequences of an accident previously evaluated.

2. *Control rod scram times.* The revisions to ITS Section 3.1.4, "Control Rod Scram Insertion Times," are made to ensure the appropriate scram times are reflected in the Technical Specifications (TS) for GE methodology. The scram timing requirements ensure that the negative reactivity insertion rate assumed in the safety analyses is preserved. Cycle specific analyses that use the GE methodology scram times will meet all of the same safety limit acceptance criteria. Additionally, for the non-cycle specific UFSAR events, GE has determined that there is negligible impact on the results of events which are not analyzed on a cycle specific basis. Therefore, there is no change to the consequences of a previously evaluated accident or transient due to the TS changes.

3. *APRM Gain and Setpoint.* The revisions to ITS Section 3.2.4 will not increase the consequences of an accident previously evaluated. The changes to this section are analytical in nature and do not affect plant systems, structures, or components. The changes in this section revise the description of fuel thermal limits that are monitored to ensure the TLHGR limit is not violated. The TLHGR protects the fuel from 1% plastic strain and fuel centerline melt. Because these criteria have not changed, the consequences of an accident have not changed.

Therefore, the proposed changes to the ITS do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

1. *Administrative Changes.* The revision to ITS Section 5.6.5 and the added definitions are purely administrative changes and therefore do not create the possibility of a new or different kind of accident.

2. *Control Rod Scram Insertion Times.* The revisions to ITS Section 3.1.4 do not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes to these sections revise the control rod scram time requirements for

operation. This change does not physically alter plant systems, structures, or components.

3. *APRM Gain and Setpoint.* The revisions to ITS Section 3.2.4 will not create the possibility of a new or different kind of accident. The changes to this section are analytical in nature and do not affect plant systems, structures, or components. The changes in this section revise the description of fuel thermal limits that are monitored to ensure the TLHGR limit is not violated.

Therefore, the proposed changes to the ITS do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does the proposed change involve a significant reduction in a margin of safety?

1. *Administrative Changes.* The revision to ITS Section 5.6.5 and the added definitions are purely administrative changes and do not affect the margin of safety.

2. *Control Rod Scram Insertion Times.* For GE analyzed cores, cycle-specific analyses using the actual averaged scram times provide MCPR operating limits that will ensure that the MCPR safety limit is not violated. Therefore, the fuel remains appropriately protected and no margins of safety are reduced.

3. *APRM Gain and Setpoint.* The addition of MFLPD/FRTP provides thermal limit protection for GE fuel. This provides equivalent protection to ensure that the TLHGR limit is maintained. Therefore, the revisions to ITS Section 3.2.4 will not reduce a margin of safety.

Therefore, the proposed changes to the ITS do not involve a significant reduction in the margin of safety.

Based on the above evaluation, ComEd has concluded that these changes involve no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: November 10, 2000.

Description of amendment request: The proposed amendments would revise several sections of the Technical Specifications (TS) and add a new TS section to incorporate Oscillation Power Range Monitor (OPRM) Instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes for LaSalle County Station will delete the thermal hydraulic instability administrative requirements and Power versus Flow figure and references to it from the TS, and insert a new TS for the OPRM instrumentation. The proposed TS will allow the enabling of the OPRM instrumentation trips. The deletion of the thermal hydraulic instability administrative requirements and Power versus Flow figure and the requirements to have an operable OPRM instrumentation trip does not have an effect on any accident previously evaluated or the associated accident assumptions. Thus, the proposed changes do not significantly increase the probability of an accident previously evaluated.

The proposed changes do not adversely affect the integrity of the fuel cladding, reactor coolant system or secondary containment. As such, the radiological consequences of previously evaluated accident are not changed. Therefore, the proposed changes do not increase the consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not effect the assumed accident performance of any structure, system, or component previously evaluated. The proposed changes do not introduce any new modes of system operation or failure mechanisms.

The OPRM instrumentation will initiate an automatic reactor trip upon detection of an instability that could threaten the Minimum Critical Power Ratio (MCPR) safety limit. The OPRM Instrumentation System consists of four (4) OPRM instrumentation trip channels. When one OPRM instrumentation module is inoperable, the remaining redundant OPRM Instrumentation module in the associated OPRM trip channel maintains the operability of the trip channel and thus there is no loss of trip function redundancy.

Thus, these proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does the change involve a significant reduction in a margin of safety?

Boiling Water Reactors are susceptible to thermal hydraulic instabilities if operated at high power and low flow conditions. 10 CFR 50, Appendix A, General Design Criterion (GDC) 10, "Reactor design," requires the reactor core and associated coolant, control, and protection systems to be designed with appropriate margin to assure that acceptable fuel design limits are not exceeded during any condition of normal operation, including the effects of anticipated operational occurrences. Additionally, GDC 12, "Suppression of reactor power oscillation," requires the reactor core and associated coolant, control, and protection systems to be designed to assure that power oscillations which can result in conditions exceeding acceptable fuel design limits are either not possible or can be reliably and readily detected and suppressed.

The detection and suppression of instability is required to insure that the MCPR safety limit is not exceeded during a transient. The OPRM instrumentation will initiate an automatic reactor trip upon detection of an instability that could threaten the MCPR safety limit.

The OPRM Instrumentation System consists of four (4) OPRM instrumentation trip channels, each trip channel consisting of two OPRM instrumentation modules. Each OPRM instrumentation module receives input from LPRMs. Each OPRM instrumentation module also receives input from the RPS Average Power Range Monitor (APRM) power and flow signals to automatically enable the trip function of the OPRM instrumentation module.

Each OPRM instrumentation module is continuously tested by a self-test function. On detection of any OPRM instrumentation module failure, either a "Trouble" or "INOP" alarm is activated. The OPRM instrumentation module provides an "INOP" alarm when the self-test feature indicates that the OPRM instrumentation module may not be capable of meeting its functional

requirements. When one OPRM instrumentation module is inoperable, the remaining redundant OPRM Instrumentation module in the associated OPRM trip channel maintains the operability of the trip channel and thus there is no loss of trip function redundancy. The OPRM Instrumentation System provides compliance with GDC 10 and GDC 12.

The incorporation of the OPRM instrumentation into the TS will allow the deletion of the current thermal hydraulic instability administrative requirements and Power versus Flow TS Figure and associated actions. The OPRM instrumentation will provide the same level of assurance that the MCPR safety limit will not be violated for anticipated oscillations as that provided by the Power versus Flow TS Figure.

The OPRM Instrumentation System enabled region of the Power versus Flow figure was adjusted to maintain the same level of protection against the occurrence of a thermal-hydraulic instability by maintaining the pre-power uprate absolute power and flow coordinates. A 5% Power Uprate was approved for LaSalle County Station, Units 1 and 2, by Facility Operating License Amendments 140 and 125, respectively, in an NRC letter dated May 9, 2000.

The proposed changes do not affect the margin of safety as the OPRM Instrumentation will initiate an automatic reactor trip upon detection of an instability that could threaten the MCPR safety limit.

Thus, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: September 29, 2000.

Description of amendment request: The proposed amendments would make various changes to the Technical Specifications (TSs) to support a change in fuel vendors from Siemens Power Corporation to General Electric and a transition to the use of General Electric (GE) 14 fuel.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Proposed Changes to Current Technical Specifications

Evaluation of effect on the probability of an accident previously evaluated:

1. *Administrative Changes.* The revisions to Current Technical Specifications (CTS) Sections 2.1.B, "Thermal Power, High Pressure and High Flow," and 3.6.A, "Recirculation Loops," regarding the Minimum Critical Power Ratio (MCPR) Safety Limit, the changes to Section 3.11B, "Transient Linear Heat Generation Rate," regarding the surveillance to monitor Transient linear heat Generation Rate (TLHGR) using either the ratio of the Maximum Fraction of Limiting Power Density (MFLPD) to the Fraction of Rated Thermal Power (FRTP) or the Fuel Design Limiting Ratio for Centerline (FDLRC) Melt, and the addition of the NRC approved RODEX2A methodology, are administrative changes and will not affect the probability of an accident previously evaluated. These changes do not affect plant systems, structures, or components. No plant mitigating systems or functions are affected by these changes.

2. *Control Rod Operability and Scram Insertion Times Methodology.* The changes to CTS Sections 3/4.3.C, "Control Rod Operability," 3/4.3.D, "Maximum Scram Insertion Times," 3/4.3.E, "Average Scram Insertion Times," 3/4.3.F, "Group Scram Insertion Times," 3/4.3.G, "Control Rod Scram Accumulators," 3/4.3.H, "Control Rod Coupling," and 3/4.3.I, "Control Rod Position Indication System," revise the methodology for determining rod operability and control rod scram time requirements for operation. These changes do not physically alter plant systems, structures or components and therefore do not affect the probability of an accident previously evaluated.

3. *Control Rod Scram Times.* The addition of required scram times for General Electric (GE) analyzed cores does not physically alter plant systems, structures or components and therefore does not affect the probability of an accident previously evaluated.

Evaluation of the effect on the consequences of an accident previously evaluated.

1. *Administrative Changes.* The revisions to CTS Sections 2.1.B and 3.6.A, regarding the MCPR Safety Limit are administrative changes and will not affect the consequences of an accident previously evaluated. These changes do not affect plant systems, structures, or components. No plant mitigating systems or functions are affected by these changes. The changes to this section are analytical in nature and do not affect plant systems, structures, or components. The administrative changes to Section 3.11.B revise the description of fuel thermal limits that are monitored to ensure the TLHGR limit is not violated. TLHGR protects the fuel from 1% plastic strain and fuel centerline melt. Because these criteria have not changed, the consequences of an accident have not changed. The NRC approved burnup extension for RODEX2A has been demonstrated to meet all applicable design criteria. Therefore, the addition of the NRC approved RODEX2A methodology does not increase the consequences of an accident previously evaluated.

2. *Control Rod Operability and Scram Insertion Times Methodology.* The revisions to CTS Sections 3/4.3.C, 3/4.3.D, 3/4.3.E, 3/4.3.F, 3/4.3.G, 3/4.3.H, and 3/4.3.I are made to ensure that appropriate scram times are reflected in the TS for GE methodology. The scram timing requirements ensure that the negative reactivity insertion rate assumed in the safety analyses is preserved. CTS methods ensure this by limiting scram times for individual rods, the average scram time, and local scram times (*i.e.,* a four control rod group). The proposed revisions, based on the Improved Technical Specification (ITS) methods, ensure this by limiting the scram times for individual rods, the number of slow rods, and the number of adjacent slow rods. Each of these methods ensure equivalent protection of the assumed reactivity insertion rate. Therefore, there is no change to the consequences of a previously evaluated accident or transient.

In addition, numerous changes to the control rod operability and scram timing TS Sections were made to reflect the ITS approach to these requirements. These revisions consist of administrative changes, more restrictive changes, and less restrictive changes. The discussion of each of these categories is provided below.

Administrative changes. These consist of restructuring, interpretation,

rearranging of requirements, and other changes not substantially revising an existing requirement. Therefore, these changes do not affect the consequences of an accident previously evaluated.

More restrictive changes. These consist of changes resulting in added restrictions or eliminating flexibility. The more restrictive requirements continue to ensure that process variables, structures, systems and components are maintained consistent with the safety analyses and licensing basis. Therefore, these changes do not involve an increase in the consequences of an accident previously evaluated.

Less restrictive changes. The less restrictive changes involve increasing the time to complete actions, increasing the time intervals between required surveillances, and deleting or revising the applicability of certain actions. The time to complete actions and the surveillance frequencies are not assumed in the analysis of the consequences of any accidents previously evaluated, and therefore, cannot increase the consequences of such accidents. The deleted or revised actions are not assumed in the safety analyses for any evaluated accidents. The revised scram timing methods will result in operating thermal limits that will maintain the identical safety limits. Thus, the consequences of the evaluated accidents will not increase.

3. *Control Rod Scram Times.* Cycle-specific analyses that use the GE methodology scram times will meet all of the same safety limit acceptance criteria. Additionally, for the non-cycle specific events in the Updated Final Safety Analysis Report (UFSAR), GE has determined that there is negligible impact on results of events which are not analyzed on a cycle-specific basis. Therefore, there is no change to the consequences of a previously evaluated accident or transient.

Therefore, the proposed changes to the CTS do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

1. *Administrative Changes.* The revisions to CTS Sections 2.1.B and 3.6.A, regarding the MCPR Safety Limit, the revisions to CTS Section 3.11.B to revise the description of TLHGR, and the addition of the NRC approved RODEX2A methodology are administrative changes and will not create the possibility of a new or different kind of accident. These changes do not affect plant systems, structures, or components. No plant mitigating systems or functions are affected by these changes.

2. *Control Rod Operability and Scram Insertion Times Methodology.* The changes to CTS Sections 3/4.3.C, 3/4.3.D, 3/4.3.E, 3/4.3.F, 3/4.3.G, 3/4.3.H, and 3/4.3.I revise the control rod operability and scram time requirements for operation. These changes do not physically alter plant systems, structures or components and therefore do not create the possibility of a new or different kind of accident.

3. *Control Rod Scram Times.* These changes do not physically alter plant systems, structures or components and therefore do not create the possibility of a new or different kind of accident.

Therefore, the proposed changes to the CTS do not create the possibility of a new or different kind of accident from any previously evaluated.

Does the proposed change involve a significant reduction in a margin of safety?

1. *Administrative Changes.* The revisions to CTS Sections 2.1.B and 3.6.A, regarding the MCPR Safety Limit, and the changes to CTS Section 3.11.B regarding the surveillance to monitor TLHGR, and the addition of the NRC approved RODEX2A methodology are administrative changes and will not reduce the margin of safety. These changes do not affect plant systems, structures, or components. No plant mitigating systems or functions are affected by these changes.

2. *Control Rod Operability and Scram Insertion Times Methodology.* The revisions to the CTS control rod operability and scram insertion times ensure that the negative reactivity insertion rate assumed in the safety analyses is preserved. CTS methods ensure this by limiting scram times for individual rods, the average scram time, and local scram times (*i.e.,* a four control rod group). ITS methods ensure this by limiting the scram times for individual rods, the number of slow rods, and the number of adjacent slow rods. Each of these methods ensure equivalent protection of the assumed reactivity insertion rate. Therefore, the changes do not involve a reduction in the margin of safety.

In addition, numerous changes to the control rod operability and scram timing TS Sections were made to reflect the ITS approach to these requirements. These revisions consist of administrative changes, more restrictive changes, and less restrictive changes. The discussion of each of these categories is provided below.

Administrative Changes. These consist of restructuring, interpretation, and complex rearranging of requirements, and other changes not substantially revising an existing requirement. Therefore, these changes do not affect the margin of safety.

More restrictive changes. These consist of changes resulting in added restrictions or eliminating flexibility. The more restrictive requirements continue to ensure that process variables, structures, systems and components are maintained consistent with the safety analyses and licensing basis. Therefore, these changes do not reduce the margin of safety.

Less restrictive changes. The less restrictive changes involve increasing the time to compete actions, increasing the time intervals between required surveillances, and deleting or revising the applicability of certain actions. The time to complete actions and the surveillance frequencies have been extended for several reasons, including experience showing low probability of failures, the benefit of allowing time to perform actions without undue haste, or due to compensating changes in other actions. The deleted or revised actions are not assumed in the safety analyses for any evaluated accidents. Thus, there is no significant reduction in the margin of safety.

3. *Control Rod Scram Times.* The addition of required scram times for GE analyzed cores based on GE analysis methodology does not involve a reduction in the margin of safety. For GE analyzed cores, cycle-specific analyses using the actual averaged scram times provide MCPR operating limits that will ensure the MCPR safety limit is not violated. Therefore, the fuel remains appropriately protected and no margins of safety are reduced.

Therefore, these proposed changes to the CTS do not involve a significant reduction in the margin safety.

Proposed Changes to ITS

Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Evaluation of the effect on the probability of an accident previously evaluated.

1. *Administrative change.* The addition of the NRC approved RODEX2A methodology is an administrative change and will not affect the probability of an accident previously evaluated. This change does not affect plant systems, structures, or components. No plant mitigating systems or functions are affected by these changes.

2. *Control Rod Scram Times.* The revision to ITS Table 3.1.4–1, "Control

Rod Scram Times," adds scram time requirements for GE analyzed cores. This change does not physically alter plant systems, structures or components and therefore does not affect the probability of an accident previously evaluated.

Evaluation of the effect on the consequences of an accident previously evaluated.

1. *Administrative Change.* The NRC approved burnup extension for RODEX2A has been demonstrated to meet all applicable design criteria. Therefore, the addition of the NRC approved RODEX2A methodology does not increase the consequences of an accident previously evaluated.

2. *Control Rod Scram Times.* The revisions to ITS Section 3.1.4, "Control Rod Scram Insertion Times," are made to ensure the appropriate scram times are reflected in the Technical Specifications (TS) for GE methodology. The scram timing requirements ensure that the negative reactivity insertion rate assumed in the safety analyses is preserved. Cycle specific analyses that use the GE methodology scram times will meet all of the same safety limit acceptance criteria. Additionally, for the non-cycle specific events in the UFSAR, GE has determined that there is negligible impact on the results of events which are not analyzed on a cycle specific basis. Therefore, there is no change to the consequences of a previously evaluated accident or transient due to the TS changes.

Therefore, the proposed changes to the ITS do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

1. *Administrative Change.* The addition of the NRC approved RODEX2A methodology is an administrative change and will not create the possibility of a new or different kind of accident. This change does not affect plant systems, structures, or components. No plant mitigating systems or functions are affected by this change.

2. *Control Rod Scram Insertion Times.* The revisions to ITS Section 3.1.4 do not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes to these sections revise the control rod scram time requirements for operation. This changes does not physically alter plant systems, structures, or components.

Therefore, the proposed changes to the ITS do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does the proposed change involve a significant reduction in a margin of safety?

1. *Administrative Change.* The addition of the NRC approved RODEX2A methodology is an administrative change and will not reduce the margin of safety. This change does not affect plant systems, structures, or components. No plant mitigating systems or functions are affected by this change.

2. *Control Rod Scram Insertion Times.* For GE analyzed cores, cycle-specific analyses using the actual averaged scram times provide MCPR operating limits that will ensure that MCPR safety limit is not violated. Therefore, the fuel remains appropriately protected and no margins of safety are reduced.

Therefore, the proposed changes to the ITS do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Detroit Edison Energy Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: November 21, 2000.

Description of amendment request: The proposed amendment would approve a proposed change to the licensing basis regarding the timing of the release of fission products following an accident. The proposed change is based upon one of the insights established in NUREG–1465, "Accident Source Terms for Light Water Nuclear Power Plants," which recognizes that there is a delay in the release of fission products from the reactor fuel following a postulated design-basis loss-of-coolant accident (LOCA). The timing of fission product release from perforated fuel rods (*i.e.,* the gap activity release) is based on the boiling-water reactor (BWR)-specific value of the timing of the gap activity release phase of a LOCA as calculated in the BWR Owners Group (BWROG) Report, "Prediction of the Onset of Fission Gas Release From Fuel in Generic BWR," NEDC–32963A, dated March 2000, as previously approved by the NRC staff. This BWROG report would be added (as Reference 4) to the list of references in Updated Final Safety Analysis Report (UFSAR) Section 15.6.7. The licensing basis change to UFSAR Section 15.6.5.5.1, "Fission Product Release From Fuel," would add the following: "For primary containment isolation purposes, the activity from the damaged core is assumed to be released into the containment at 121 seconds following the accident. This timing assumption recognizes conclusions derived from the source term studies described in NUREG–1465, Regulatory Guide 1.183 and Reference 4. * * * The results of this Table [15.6.5–2, which presents the airborne activity in the containment] conservatively assume activity released from the core enters the drywell at accident time zero." UFSAR Section 15.6.5.5.2, "Fission Product Transport to the Environment," would be similarly supplemented to state, "The results in this Table [15.6.5–3, which gives the fission product release to the environment due to containment leakage and leakage from engineered safety feature components outside containment] conservatively assume activity released from the core enters the drywell at accident time zero." UFSAR Section 15.6.5.5.3, "Results," would be supplemented to state, "Dose associated with coolant activity release in the first 121 seconds of the accident is not included in this Table [15.6.5–4, which presents the calculated exposures for the design basis analysis]. Its contribution to the accident dose is insignificant (on the order of 2 rem [to the] thyroid at the Exclusion Area Boundary)."

The effect of the NRC staff's approval of the proposed amendment is to allow the licensee, in accordance with 10 CFR 50.59, to increase the automatic closure times for selected primary containment isolation valves (PCIVs) (*i.e.,* those PCIVs credited for limiting post-accident doses to both control room personnel and to offsite individuals). Valves with closure times based on other requirements (*i.e.,* system performance requirements, equipment qualification, high-energy line break mitigation, or other regulatory requirements) would not be affected by the proposed change.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

1. The change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change takes credit for one of the alternative source term (AST) insights contained in NUREG–1465 which recognizes that fission product release from a fuel assembly is not instantaneous in a design basis accident. Implementation of this change into the licensing basis will be used to justify an increase in the maximum allowable closure times for primary containment isolation valves. A change in the timing of the gap release does not affect the precursors for any accident or transient previously evaluated as part of the Fermi 2 licensing basis. Therefore, there is no increase in the probability of any accident.

A plant specific radiological analysis has been performed to evaluate the effects of extending the maximum allowable valve closure times on accident dose consequences. This evaluation utilized the insights contained in NUREG–1465 * * * and NEDC–32963A * * * to justify no gap activity release during the initial 121 seconds of the accident. Therefore, during this period, the only releases are from reactor coolant activity. Assuming the maximum coolant iodine activity permitted in the Technical Specifications, the 2-hour Exclusion Area Boundary (EAB) dose associated with this release has been conservatively estimated to be less than 2 rem thyroid. This dose represents a small fraction of the LOCA dose evaluated in the UFSAR and is significantly lower than the 300 rem thyroid dose acceptance limit in 10 CFR Part 100.

UFSAR Figures 6.2–9 and 6.2–11 show the DBA [design-basis accident] LOCA primary containment pressure response. These figures indicate that drywell pressure peaks at around 5 seconds into the accident before gradually dropping off; therefore, PCIVs would not be required to close against increased containment pressure as a result of this change.

Utilizing all of the insights contained in NUREG–1465, would result in a reduction in the calculated dose. However, because this request is for a selective implementation of the AST scope, crediting only the timing of the gap activity release, the long term dose calculations based on TID–14844 in the UFSAR are not changed. Therefore, it is concluded that the proposed change does not significantly increase the consequences of a previously evaluated accident.

2. The change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The primary containment isolation system is designed to prevent the unfiltered release of radioactive material to the environs following an accident. Therefore, the system is relied upon to mitigate the dose consequences of an accident. The proposed change recognizes the time delay before fission products are released into the containment as a result of fuel damage and allows for the adjustment of the maximum PCIV closure times accordingly. This change does not affect the function of the primary containment isolation system. The relaxation in valve closure times will be applied only to valves that do not have other system performance requirements on isolation time. Therefore, the proposed change does not create the potential for a new or different kind of accident from any accident previously evaluated.

3. The change does not involve a significant reduction in the margin of safety.

The proposed change revises the Fermi 2 licensing basis for the offsite dose calculations during the initial 121 seconds of a LOCA scenario. For this period of time, only coolant activity release is postulated. No fission product release from perforated fuel rods is assumed. All other assumptions, bases and methodologies used in the long-term offsite dose calculations remain unchanged. The total dose shown in UFSAR Table 15.6.5–4 does not significantly increase due to the delay in the fission product release. The total amount of radioactivity remains the same and is bounded by the limits established in 10 CFR 100. The dose associated with coolant activity release in the initial 121 seconds of the accident has been determined to be insignificant. Therefore, the proposed change will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Peter Marquardt, Legal Department, 688 WCB, Detroit Edison Company, 2000 2nd Avenue, Detroit, Michigan 48226–1279.

NRC Section Chief: Claudia M. Craig.

Entergy Nuclear Generation Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: November 22, 2000.

Description of amendment request: The proposed amendment would change the pressure-temperature limit curves of Figures 3.6.1, 3.6.2, and 3.6.3 of Pilgrim's Technical Specifications (TSs) to cover operation between 20, 32, and 48 Effective Full Power Years. Also changes to the Bases section consistent with the TS changes are proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's analysis is presented below:

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The licensee has proposed to adopt a change in the calculation methodology for the pressure-temperature limits based upon Code Cases N–640 and N–588. The code cases were developed using knowledge gained through years of industry experience. Pressure-temperature curves developed using the allowances of Code Cases N–640 and N–588 yield more operating margin. However, the experience gained in the areas of fracture toughness of materials and pre-existing undetected defects show that some of the previous assumptions used for the calculation of pressure-temperature limits are overly conservative. There are no physical changes to the plant being introduced by the proposed changes to the pressure-temperature curves. The proposed changes do not modify the reactor coolant pressure boundary, (*i.e.*, there are no changes in operating pressure, materials or seismic loading). The proposed changes do not adversely affect the integrity of the reactor coolant pressure boundary such that its function in the control of radiological consequences is affected. Therefore, providing the allowances of the subject code cases in developing the pressure-temperature limit curves do not involve a significant increase in the probability or consequences of an accident previously evaluate. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes represent a change in the methodology in how the

pressure-temperature curves were generated. The proposed changes provide more operating margin in the pressure-temperature limit curves for in-service leakage and hydrostatic pressure testing, non-nuclear heatup and cooldown, and criticality. However, compliance with the proposed pressure-temperature curves will ensure conditions in which brittle fracture of primary coolant pressure boundary materials is possible will be avoided because such compliance with the proposed pressure-temperature curves provides sufficient protection against a non-ductile-type fracture of the reactor pressure vessel. Therefore, no new modes of operation are introduced nor will the changes create any failure mode not bounded by the previously evaluated accidents. Further, the proposed changes to the pressure-temperature curves do not affect any activities or equipment and are not assumed in any safety analysis to initiate any accident sequence. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a significant reduction in a margin of safety.

The proposed changes reflect an update of the pressure-temperature curves. The revised curves are based on the latest U.S. Nuclear Regulatory Commission and American Society of Mechanical Engineers (ASME) guidance. The revised pressure-temperature limits have been developed using the K_{ic} fracture toughness curve shown in the ASME Boiler and Pressure Vessel (B&PV) Code Section XI, Appendix A, Figure A–2000–1, in lieu of the K_{Ia} fracture toughness curve shown in ASME B&PV Code Section XI, Appendix G, Figure G–2010–1, as the lower bound fracture toughness. The other margins involved with the ASME B&PV Code, Section XI, Appendix G process of determining pressure-temperature limit curves remain unchanged.

These revised pressure-temperature limits, although less restrictive than the current limits, are established in accordance with current regulations and the latest ASME Code information. The revised pressure-temperature curves provide more operating margin and, thus, more operational flexibility than the current pressure-temperature curves. However, industry experience since the inception of the pressure-temperature limits in 1974 confirms that some of the original methodologies used to develop pressure-temperature curves are overly conservative. Accordingly, ASME Code Cases N–640 and N–588 take advantage of the acquired knowledge by establishing more realistic methodologies for the development of pressure-temperature curves. Therefore, operational flexibility is gained and an acceptable margin of safety to reactor pressure vessel non-ductile type fracture is maintained. No plant safety limits, setpoints, or design parameters are adversely affected by the proposed changes. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on the staff's analysis, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts, 02360–5599.

NRC Section Chief: James W. Clifford.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: November 30, 2000.

Description of amendment request: The proposed amendment would relocate the boration systems requirements from the Technical Specifications (TSs) to the Technical Requirements Manual (TRM).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The boration systems, BAMT [boric acid makeup tank], Boric Acid Makeup Pumps, and Charging Pumps, are part of the CVCS [chemical and volume and control system], which functions to maintain Reactor Coolant System inventory and chemistry. The boration system functions will continue to be maintained in accordance with their associated design requirements. During accident conditions when a boration source is required for accident mitigation, the RWT [refueling water tank] provides suction for the High Pressure Safety Injection (HPSI) and Low Pressure Safety Injection (LPSI) pumps. The CVCS boration systems are not credited in the mitigation of any accidents. Therefore, the dose consequences associated with accident analysis will be unchanged. The HPSI, LPSI pumps and RWT are required by Technical Specifications.

Based on an evaluation of the criterion listed in 10 CFR 50.36(c)(2)(ii), the relocation of the CVCS boration systems to the TRM is acceptable. No changes will be made to these systems that will affect their current operation.

Therefore, this change does not involve a significant increase in the probability of [or] consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The design and functions of the Boric Acid Makeup Tanks, Boric Acid Makeup Pumps, Charging Pumps and associated flow paths will continue to be maintained. These systems are not accident initiators. Because the proposed amendment will not change the design, configuration or method of operation of the plant, it will not create the possibility of a new or different kind of accident.

Safety Analysis Report (SAR) Chapter 15 provides the analysis of accidents that are considered credible. The Uncontrolled Control Element Assemblies (CEA) withdrawal from a subcritical or a critical condition, Boration Dilution Event, and Loss of Coolant Accident (LOCA) were evaluated in relationship to relocating these specifications to the TRM. Boric acid injection via the CVCS system was not credited in mitigating any of these accidents.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

The movement of these TSs to the TRM does not reduce the existing TSs or surveillance requirements. The proposed change does not change the design function for any of these components. Additionally, none of the boration systems contained in these specifications are credited in any accident analysis. The systems are used to maintain RCS [reactor coolant system] chemistry and inventory and this function will be maintained.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: November 10, 2000.

Description of amendment request: Entergy Operations, Inc. is proposing that the Grand Gulf Nuclear Station (GGNS) Operating License be amended to modify those Technical Specifications (TS) required to support GGNS Cycle 12 operation. The modifications would include a change to the Safety Limit Minimum Critical Power Ratio (SLMCPR) reported in TS 2.1.1.2, and the references for analytical methods used to determine reactor core operating limits listed in TS 5.6.5. Specifically, the proposed amendment reflects a decrease of the two recirculation loop SLMCPR limit from 1.09 to 1.08, with the single recirculation loop SLMCPR limit remaining unchanged at 1.10. The proposed changes are necessary in order to reflect the Nuclear Regulatory Commission (NRC) approved methods used in determining the GGNS Cycle 12 core operating limits, and reflect the safety limit changes for the Cycle 12 mixed core consisting of Siemens Power Corporation (SPC) ATRIUM–10 reload fuel and General Electric (GE) GE–11 reactor fuel.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The Minimum Critical Power Ratio (MCPR) safety limit is defined in the Bases to Technical Specification 2.1.1 as that limit which "ensures that during normal operation and during Anticipated Operational Occurrences (AOOs), at least 99.9% of the fuel rods in the core do not experience transition boiling." The MCPR safety limit satisfies the requirements of General Design Criterion 10 of Appendix A to 10 CFR (Part) 50 regarding acceptable fuel design limits. The MCPR safety limit is re-evaluated for each reload using NRC-approved methodologies. The analyses for GGNS Cycle 12 have concluded that a two-loop MCPR safety limit of 1.08, based on the application of Siemens Power Corporation's NRC-approved MCPR safety limit methodology, will ensure that this acceptance criterion is met. For single-loop operation, a MCPR safety limit of 1.10 (unchanged), also ensures that this acceptance criterion is met.

In addition to the MCPR safety limit, core operating limits are established to support the Technical Specification 3.2 requirements which ensure that the fuel design limits are not exceeded during any conditions of normal operation or in the event of any anticipated operational occurrences (AOO). The methods used to determine the core operating limits for each operating cycle are based on methods previously found acceptable by the NRC and listed in TS section 5.6.5. A change to TS section 5.6.5 is requested to include the SPC methods in the list of NRC approved methods applicable to GGNS. These NRC approved methods will continue to ensure that acceptable operating limits are established to protect the fuel cladding integrity during normal operation and in the event of an AOO.

The requested Technical Specification changes do not involve any plant modifications or operational changes that could affect system reliability or performance or that could affect the probability of operator error. The requested changes do not affect any postulated accident precursors, do not affect any accident mitigating systems, and do not introduce any new accident initiation mechanisms.

Therefore, these changes to the Minimum Critical Power Ratio (MCPR) safety limit and to the list of methods used to determine the core operating limits do not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The ATRIUM–10 fuel to be used in Cycle 12 is of a design compatible with the co-resident GE–11. Therefore, the introduction of ATRIUM–10 fuel into the Cycle 12 core will not create the possibility of a new or different kind of accident. The proposed changes do not involve any new modes of operation, any changes to setpoints, or any plant modifications. The proposed revised MCPR safety limits have accounted for the mixed fuel core and have been shown to be acceptable for Cycle 12 operation. Compliance with the criterion for incipient boiling transition continues to be ensured. The core operating limits will continue to be developed using NRC approved methods which also account for the mixed fuel core design. The proposed MCPR safety limits or methods for establishing the core operating limits do not result in the creation of any new precursors to an accident.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

The MCPR safety limits have been evaluated in accordance with Siemens Power Corporation's NRC-approved cycle-specific safety limit methodology to ensure that during normal operation and during Anticipated Operational Occurrences (AOO's) at least 99.9% of the fuel rods in the core are not expected to experience transition boiling. On this basis, the implementation of this Siemens Power Corporation methodology does not involve a significant reduction in a margin of safety.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: November 8, 2000.

Description of amendment request: The proposed amendment will delete Technical Specification (TS) 3/4.4.1.6, "Reactor Coolant Pump-Startup," from the Beaver Valley Power Station (BVPS) TSs. This is accompanied by moving the secondary side water temperature to

cold leg temperature difference Reactor Coolant Pump (RCP) start requirement to existing Reactor Coolant System (RCS) TSs and deleting the pressurizer level requirement from Unit 1 TS 3/4.4.1.6. Unit 2 TS 3/4.4.1.6 does not contain the pressurizer level requirement. The RCS TSs affected are TS 3/4.4.1.2, "Reactor Coolant System—Hot Standby," (for Unit 2 only) and 3/4.4.1.3, "Reactor Coolant System—Shutdown," (both units).

Changes to the affected Bases of the Technical Specifications will also be made.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes will not significantly increase the probability of an accident previously evaluated in the BVPS Updated Final Safety Analysis Report (UFSAR) because accident initiation probabilities are independent of these changes. The proposed changes do not adversely affect any accident initiating events. The assumptions of the safety analysis are not changed by this license amendment request. The applicable concern associated is the possibility of overpressurizing the Reactor Coolant System (RCS) when a Reactor Coolant Pump (RCP) is started in a non-isolated loop. Adhering to a maximum secondary to primary side temperature difference (Technical Specifications 3/4.4.1.2, Reactor Coolant System—Hot Standby, Unit 2 only, and 3/4.4.1.3, Reactor Coolant System—Shutdown, both units), before an RCP is started and the operability of the OPPS (Technical Specification 3/4.4.9.3, Overpressure Protection Systems, for both units), which uses the PORVs as a pressure relief device, prevents this. The existing Technical Specifications specify when the OPPS is to be operable, the maximum secondary to primary side temperature difference permitted, and the operability requirements imposed on the PORVs.

The consequences associated with the starting of an RCP and potential overpressurization of the RCS also are not changed by the proposed license amendment. None of the accident prevention or mitigation controls or capabilities have been changed. Reactor Coolant Pump start restrictions are retained with the Technical Specifications, except for the pressurizer level requirement for BVPS Unit 1. This requirement has been shown to be unnecessary in preventing RCS overpressurization because the analysis assumes a water solid pressurizer when at least one PORV is operable. The safety analysis has shown that the temperature difference requirement is sufficient to preclude RCS overpressurization provided one PORV is available for pressure relief. As a result, the proposed changes will not affect any accident analysis consequences.

The Technical Specifications continue to specify the maximum secondary to primary side temperature difference, when the OPPS is to be enabled, and the operability requirements for the PORVs. These requirements are not altered by this license amendment request and will continue to assure that the OPPS analysis assumptions are met. It is sufficient to specify the temperature difference restriction for only Unit 2 Technical Specification 3/4.4.1.2 because the Unit 1 OPPS enabling temperature is not within the applicability of Technical Specification 3/4.4.1.2; *i.e.,* Mode 3, whereas the OPPS enabling temperature is for Unit 2. Therefore, assurance is provided that the 10 CFR 50 Appendix G limits are not exceeded and that this proposed change is acceptable.

The Bases and editorial changes, needed to meet format requirements and reflect the deletion of Technical Specification 3/4.4.1.6, have no effect on accident probabilities or consequences.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not modify the manner in which any plant equipment is maintained. The equipment used to prevent RCS overpressurization is not altered by the proposed changes. Specification of the number of PORVs required to be operable when the OPPS is enabled, and at what temperature the OPPS is required, will continue to be retained in Technical Specification 3/4.4.9.3, Overpressure Protection Systems. The necessary RCP start restrictions assumed in the safety analysis are not affected by the proposed changes. It has been shown that deleting the pressurizer level requirement for Unit 1 is consistent with the OPPS analysis. To assure the 10 CFR 50 Appendix G limits are not violated, the necessary requirements for starting an RCP in a non-isolated loop are retained within the Technical Specifications. Therefore, the analysis of an overpressurization of the RCS due to a heat input transient caused by starting an idle RCP is not changed by this license amendment request.

The Bases and editorial changes, needed to meet format requirements and reflect the deletion of Technical Specification 3/4.4.1.6, will not affect the creation of accidents. The OPPS analysis has demonstrated that an RCP can be started with a water solid RCS, provided the secondary to primary side temperature difference requirement is met, and a single PORV is available for pressure relief, without violating 10 CFR 50 Appendix G limits.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated for BVPS.

3. Does the change involve a significant reduction in a margin of safety?

The margin of safety associated with starting an RCP in a non-isolated loop is the ability of a single OPPS PORV to relieve the potential RCS pressure increase without violating 10 CFR 50 Appendix G limits. This is maintained by meeting the secondary side water temperature to cold leg temperature difference and PORV operability requirements imposed by the Technical Specifications. These Technical Specification requirements are not altered by the proposed changes. The only deletion being proposed is the elimination of the pressurizer level requirement for BVPS Unit 1. This requirement has been shown to be unnecessary in meeting 10 CFR 50 Appendix G limits because the OPPS analysis assumes a water solid pressurizer and at least one OPPS PORV is operable. Starting an RCP with both OPPS PORVs not operable is not consistent with the RCS venting actions required by Technical Specification 3/4.4.9.3. In order to comply with the venting required actions with neither PORV operable, the RCS must be depressurized or in the process of being depressurized. Depressurization of the RCS would preclude starting an RCP. In order to start an RCP, the RCS must be pressurized to ensure a minimum pressure differential exists across the No. 1 seal of the RCP. Therefore, the PORV related requirements of Unit 1 Technical Specification 3/4.4.1.6 are sufficiently addressed by Technical Specification 3/4.4.9.3. By eliminating PORV operability requirements from Unit 1 Technical Specification 3/4.4.1.6,

the Technical Specifications become more consistent between the two units and with the Standard Technical Specifications. All other RCP start and OPPS requirements are retained within the Technical Specifications and associated Bases sections.

The Bases and editorial changes, needed to meet format requirements and reflect the deletion of Technical Specification 3/4.4.1.6, will not affect the margin of safety. Therefore, the proposed changes do not involve a significant reduction in a margin of safety regarding meeting 10 CFR 50 Appendix G limits.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary O'Reilly, FirstEnergy Nuclear Operating Company, Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Marsha Gamberoni.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: November 9, 2000.

Description of amendment request: The proposed changes would revise the action statements of the Davis-Besse Nuclear Power Station Technical Specifications (DBNPS) (TS) Limiting Condition for Operation (LCO) 3.5.2 and 3.6.2.1. This proposal would extend the allowed outage time for one Low Pressure Injection (LPI) System/Decay Heat Cooler train of an Emergency Core Cooling System (ECCS) subsystem from 72 hours to 7 days (168 hours) for LCO 3.5.2. One Containment Spray System train may be impacted by the inoperability of the associated LPI train. Therefore, an extension of the allowed outage time for one train of the Containment Spray System from 72 hours to 7 days for LCO 3.6.2.1 is also being proposed, as well as new information to be added to TS Bases Section 3/4.5.2 and 3/4.5.3 to clarify the TS LCO 3.5.2 requirements. These proposed changes are based on the Babcock & Wilcox Owners Group (BWOG) Topical report BAW–2295A, Revisions 1 & 2, "Justification for the Extension of Allowed Outage Time for Low Pressure Injection and Reactor Building Spray System," dated October 9, 1998.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

The Davis-Besse Nuclear Power Station (DBNPS) has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit No. 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because, as demonstrated in the Babcock & Wilcox Owners Group's Topical Report BAW–2295A, Revisions 1 and 2, *Justification for Extension of Allowed Outage Time for Low Pressure Injection and Reactor Building Spray Systems,* no accident initiators, conditions, or assumptions are affected by the proposed changes to extend the allowed outage time (AOT) from 72 hours to 7 days for one inoperable train of Low Pressure Injection (LPI) in Technical Specification (TS) 3/4.5.2 Emergency Core Cooling Systems—ECCS subsystems—$T_{avg} \geq 280°F$ or Containment Spray in TS 3/4.6.2.1, Containment Systems—Depressurization and Cooling Systems—Containment Spray System. The proposed change to TS Bases Section 3/4.5.2 and 3/4.5.3 are discussions of the present TS Limiting Condition for Operation (LCO) which do not affect the probability of an accident.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because an extension in the allowable outage time from 72 hours to 7 days for one inoperable train will not affect any previously evaluated accidents. The proposed changes to the TS Bases discuss the present TS LCO and do not affect the consequences of an accident. The proposed changes do not alter the source term, containment isolation, or allowable radiological releases.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because no new failure mode or transient is introduced since the proposed changes do not involve a plant modification or allow operation of any plant systems, structures, or components in a manner not addressed in the DBNPS Design Basis Accident analyses.

3. Not involve a significant reduction in a margin of safety because extending the allowed outage time to 7 days for one inoperable train does not impact any assumptions or inputs in the DBNPS Updated Safety Analysis Report. The proposed changes have been evaluated and determined that the extended allowed outage time is consistent with safe operation considering the redundant systems of required features and the administrative controls in place for removing this equipment from service. The proposed TS Bases changes reflect the existing TS LCO and, therefore, do not reduce a margin of safety.

On the basis of the above, the DBNPS has determined that the License Amendment Request does not involve a significant hazards consideration. As this License Amendment Request concerns a proposed change to the Technical Specifications that must be reviewed by the Nuclear Regulatory Commission, this License Amendment Request does not constitute an unreviewed safety question.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: November 9, 2000.

Description of amendment request: The proposed change would relocate Technical Specification (TS) 3/4.4.9.2 to the Davis Besse Nuclear Power Station (DBNPS) Updated Safety Analysis Report (USAR) Technical Requirements Manual (TRM). A corresponding change to the TS index is also proposed. Relocation of TS 3/4.4.9.2 to the USAR TRM will allow future proposed changes to the requirements to be evaluated in accordance with 10 CFR 50.59 and implemented if prior Nuclear Regulatory Commission (NRC) approval is not required. The proposed change is in accordance with the requirements of 10 CFR 50.36 and the relocation guidance provided in the NRC's "Final Policy Statement on TS Improvements for Nuclear Reactors," dated July 22, 1993. The proposed change is also in accordance with the guidance provided by the improved "Standard Technical

Specifications—Babcock & Wilcox Plants," NUREG–1430, Revision 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

The Davis-Besse Nuclear Power Station (DBNPS) has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit No. 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no change is being made to any accident initiator. No previously analyzed accident scenario is changed, and initiating conditions and assumptions remain as previously analyzed.

The proposed change would relocate TS 3/4.4.9.2 "Reactor Coolant System—Pressurizer," to the DBNPS Updated Safety Analysis Report (USAR) Technical Requirements Manual (TRM). TS 3/4.4.9.2 provides temperature limits for the Pressurizer based on its fatigue analysis design criteria. The proposed change to remove this TS is in accordance with 10 CFR 50.36 and the NRC's "Final Policy Statement on TS Improvements for Nuclear Power Reactors," dated July 22, 1993. The proposed change is also consistent with the improved "Standard Technical Specifications—Babcock and Wilcox Plants," NUREG–1430, Revision 1. A corresponding change to the TS Index page V that removes reference to the Pressurizer Pressure/Temperature Limits is an administrative change.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed change does not affect accident conditions or assumptions used in evaluating the radiological consequences of an accident. The proposed change does not alter the source term, containment isolation or allowable radiological releases.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because no new failure mode is introduced since the proposed relocation does not involve a modification or change in operation of any plant systems, structures, or components. No new, or different types of failures or accident initiators are introduced by the proposed change.

3. Not involve a significant reduction in a margin of safety because the proposed change is administrative in nature, consisting of the relocation of certain TS requirements into a licensee-controlled document, and has no bearing on the margin of safety which exists in the present TS or Updated Safety Analysis Report (USAR).

On the basis of the above, the DBNPS has determined that the License Amendment Request does not involve a significant hazards consideration. As this License Amendment Request concerns a proposed change to the Technical Specifications that must be reviewed by the Nuclear Regulatory Commission, this License Amendment Request does not constitute an unreviewed safety question.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: October 30, 2000.

Description of amendment request: The proposed amendment would revise the St. Lucie Unit 1 Technical Specification (TS) 3.9.4, Containment Penetrations. TS 3.9.4 requires a personnel airlock (PAL) door to be closed during core alterations or movement of irradiated fuel within containment. The proposed change would allow both containment PAL doors to be open during core alterations and movement of irradiated fuel in containment provided: (a) that at least one personnel airlock door is capable of being closed; (b) the plant is in MODE 6 with at least 23 feet of water above the fuel; and (c) a designated individual is available outside the PAL to close the door. Operability of the containment PAL door includes the requirements that the door is capable of being closed and that any cables or hoses across the PAL door have quick-disconnects to ensure the door is capable of being closed in a timely manner.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to TS 3.9.4 would allow the containment personnel airlock (PAL) doors to be open during fuel movement or core alterations. Currently, a single PAL door is closed during fuel movement or core alterations to prevent the escape of radioactive material in the event of an in-containment fuel handling accident. The PAL is not an initiator of an accident. Whether the PAL doors are open or closed during fuel movement and core alterations has no affect on the probability of any accident previously evaluated.

Allowing the PAL doors to be open during fuel movement or core alterations does not significantly increase the consequences from a fuel handling accident. The calculated offsite doses are well within the limits of 10 CFR Part 100. In addition, the calculated doses are larger than the expected doses because the calculation does not incorporate the closing of the PAL doors after the containment is evacuated. The proposed change should significantly reduce the dose to workers in containment in the event of a fuel handling accident by reducing the time required to evacuate the containment.

The changes being proposed do not affect assumptions contained in plant safety analyses or the physical design of the plant, nor do they affect other Technical Specifications that preserve safety analysis assumptions. Therefore, operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to Technical Specification 3.9.4, Containment Penetrations, affects a previously evaluated fuel handling accident. Both the current and the reanalyzed fuel handling accident analysis assume that all of the iodine and noble gases that become airborne within the containment escape and reach the site boundary and low population zone with no credit taken for filtration, the containment building barrier, or for decay or deposition taken. Since the

proposed change does not involve the addition or modification of equipment, nor does it alter the design of plant systems and the revised analysis is consistent with the fuel handling accident analysis, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The margin of safety as defined by 10 CFR Part 100 has not been reduced. The calculated dose is a well within of the limits given in 10 CFR Part 100 or NUREG–0800. The proposed changes do not alter the bases for assurance that safety-related activities are performed correctly or the basis for any Technical Specification that is related to the establishment of or maintenance of a safety margin. Therefore, operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Richard P. Correia.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: November 27, 2000.

Description of amendment request: The proposed amendments delete requirements from the Technical Specifications (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the technical specifications (TS) for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 11, 2000 (65 FR 49271) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on October 31, 2000 (65 FR 65018). The licensee affirmed the applicability of the following NSHC determination in its application dated November 27, 2000.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind

of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Richard P. Correia.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: November 28, 2000.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Table 6.2.1, Minimum Shift Crew Composition with Two Separate Control Rooms and TS Section 6.3.1 (2), Unit Staff Qualifications for the Shift Technical Advisor (STA). The proposed amendments would permit, as an alternative to the current dedicated STA, an on-shift senior reactor operator (SRO) position to be combined with the required STA position. The proposed amendments would require an individual filling either the dedicated STA position or the combined SRO/STA position to meet the Technical Specifications educational requirements as described in **Federal Register** Notice 50 FR 43621, "Commission Policy Statement on Engineering Expertise on Shift." These proposed changes are in accordance with the recommendations in the NRC *Policy Statement on Engineering Expertise on Shift,* published on October 28, 1985 and transmitted to all power reactor licensees and applicants by NRC Generic Letter 86–04, of the same title as the October 28, 1985 policy statement, dated February 13, 1986. As permitted by the policy statement, FPL proposes to exercise either of the STA options on a shift-by-shift basis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Implementation of the proposed changes will not involve any physical changes to plant systems, structures, or components (SSC), or the manner in which these SSCs are operated, maintained, modified, tested, or inspected. Therefore, the proposed use of either the dual role SRO/STA position or the current dedicated STA position does not increase the probability of an accident previously evaluated. Implementation of the proposed changes will result in personnel with enhanced operational knowledge being assigned to perform the STA function of providing accident assessment expertise, and analyzing and responding to off normal occurrences when needed.

The NRC stated preference in the October 28, 1985, *Policy Statement on Engineering Expertise on Shift,* indicates that the NRC has concluded that the individual filling the dual role SRO/STA position may perform these functions better than a non-licensed individual filling the STA position, even when the SRO/STA is concurrently functioning as one of the required shift SROs. Therefore, the proposed TS changes do not increase the consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendments will not change the physical plant or the modes of plant operation defined in the facility license for either St. Lucie unit. Changes proposed for the administrative controls do not involve the addition or modification of equipment, nor do they alter the design or operation of plant systems. Therefore, operation of either facility in accordance with its proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed amendments revise certain administrative controls involving the on-site programmatic process for review and approval of plant procedures. Neither the scope, nor the requirement to establish, maintain, and implement procedures for activities that could affect nuclear safety are being changed.

The NRC stated preference in the October 28, 1985, *Policy Statement on Engineering Expertise on Shift,* indicates that the NRC has concluded that the individual filling the dual role SRO/STA position may perform these functions better than a non-licensed individual filling the STA position, even when the SRO/STA is concurrently functioning as one of the required shift SROs. Therefore, the proposed amendments should involve an enhancement in a margin on safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Richard P. Correia.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of amendment request: October 30, 2000.

Description of amendment request: The proposed amendments would revise Technical Specification 5.3.2 for Turkey Point Units 3 and 4 to extend the residual heat removal (RHR) pump allowed outage time (AOT) from 72 hours to 7 days to restore an inoperable

RHR pump to operable status. The proposed extension is based on the projected time required to replace a leaking or failed pump shaft seal, perform post-maintenance testing, and complete any additional corrective actions that may be needed to restore the pump to operable status. The extended RHR pump AOT will provide adequate time so that future seal repair activities are completed successfully in a safe manner.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The RHR system is part of the Emergency Core Cooling System. Inoperable RHR pumps are not accident initiators in any accident previously evaluated, and an extended AOT to restore operability of an inoperable RHR pump would not increase the probability of occurrence of accidents previously analyzed. Therefore, this change does not involve an increase in the probability of an accident previously evaluated.

The RHR system is primarily designed to mitigate the consequences of the large Loss Of Coolant Accident (LOCA). In addition, the RHR system provides for primary system heat removal during unit shutdown conditions. The proposed changes do not affect any of the assumptions relative to accident initiators or accident response provided in the plant safety analyses. Accordingly, the consequences of accidents previously evaluated do not change.

A Probabilistic Safety Assessment (PSA) was performed to evaluate the impact of extending the allowed outage time on the RHR pump from 72 hours to 7 days. FPL concluded from the results of that assessment that the risk contribution of the AOT extension is very small, and that the net impact of the proposed amendment may be risk neutral.

Therefore, the change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not alter the design, physical configuration, or modes of operation of the plant. Plant configurations that are prohibited by Technical Specifications will not be created by the AOT extension. Therefore, the proposed activity does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The margin of safety associated with the Emergency Core Cooling System is established by acceptance criteria for system performance defined in 10 CFR 50.46. The proposed amendments will not change these acceptance criteria or the operability requirements for equipment that is used to achieve such performance as demonstrated in the plant safety analyses. Moreover, a Probabilistic Safety Assessment of the risk impact of extending the AOT for a single inoperable RHR pump has concluded that the risk contribution is very small, RHR system reliability can potentially be improved, and the net impact of the proposed change may be risk neutral. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Richard P. Correia.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of amendment request: December 6, 2000.

Description of amendment request: The proposed amendment deletes requirements from the Technical Specifications (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the technical specifications for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 11, 2000 (65 FR 49271) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on October 31, 2000 (65 FR 65018). The licensee affirmed the applicability of the following NSHC determination in its application dated December 6, 2000.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not

affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Richard P. Correia.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment requests: November 15, 2000.

Description of amendment requests: The proposed amendments would revise the Technical Specification (TS) 3.2.6, "Allowable Power Level—APL," and TS 1.38, "Allowable Power Level (APL)," definitions of APL to remove a condition that limits APL to 100 percent of rated thermal power.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

No new accident initiators or precursors are created by the proposed T/S changes. Reactor thermal power and power distribution within the reactor core are not initiators or precursors to any previously evaluated accident. There are no physical changes to the plant associated with the proposed T/S changes that would create any new accident initiators or precursors. Therefore, the proposed T/S changes do not increase the probability of occurrence of any accident previously evaluated.

Reactor thermal power up to the calculated value of APL ensures that the accident analysis results are not impacted by maintaining reactor core power distribution within prescribed limits. Since T/S 1.3 still contains a limitation on the maximum reactor thermal power allowed during normal operations, the normal overall operating limits for the reactor core are not changed. Accident analyses generally include a calorimetric error allowance of 2% or assume an initial power level of at least 102%. Using the additional limit on reactor thermal power based on APL ensures operation within the power distribution limits assumed in the accident analyses. Therefore, the proposed T/S changes do not affect operation of the reactor core and do not modify either the maximum acceptable reactor thermal power or the maximum allowed power distribution limits.

The proposed T/S changes do not change or alter the design criteria for the systems or components used to mitigate the consequences of any design basis accident. The reactor protection system (RPS), including reactor trips based upon overall reactor thermal power and power distribution within the reactor core, are not affected by the proposed T/S changes. The initial conditions of the accident analyses, including maximum reactor thermal power and worst-case power distribution within the reactor core, are not changed. As a result, the expected operation of the emergency core cooling systems (ECCS) are not affected by the proposed T/S changes. Radiological consequences of previously evaluated accidents are not increased, since overall reactor thermal power and power distribution limits are still maintained within the assumptions of the accident analyses, and operation of

the RPS and ECCS is not affected. Therefore, the proposed changes do not increase the consequences of any accident and do not impact offsite dose considerations.

Therefore, the probability of occurrence or the consequences of accidents previously evaluated are not increased.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Reactor thermal power and power distribution within the reactor core cannot be an initiator or precursor to an accident. There are no physical changes to the plant associated with the proposed T/S changes that would create any new accident initiators or precursors. The proposed T/S changes do not degrade the reliability of any existing system, structure, or component. No new failure modes, malfunctions, or system interactions are created. The maximum steady state reactor core power level as defined by T/S 1.3 is not changed. The actual power distribution limits are not changed since the calculated value of APL is not changed. Therefore, the accident analyses assumptions and results are unchanged.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed T/S changes do not change either the overall maximum reactor thermal power allowed, or the reactor core power distribution limits allowed. Maximum reactor thermal power remains limited by T/S 1.3. The calculated value of APL in T/S 3.2.6 is not changed, and remains as a control to ensure reactor core power distribution limits consistent with the accident analyses are satisfied. Therefore, safety margins related to power distribution limits are not affected. The proposed T/S changes do not affect any of the T/S safety limits or T/S limiting safety system settings, and RPS setpoints as defined by the T/S are not changed or affected.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: Claudia M. Craig.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: November 28, 2000.

Description of amendment request: The proposed amendment would establish technical specifications (TSs) for the emergency service water system. It would also revise TS 3.0 to include general requirements for system operability.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The EFT-ESW [emergency filtration train-emergency service water] System is not an accident initiator. The proposed amendment provides operability requirements and surveillance requirements to ensure the ESW System is available and operable when required for accident mitigation. The proposed operability requirements and allowed outage times are consistent with similar requirements for the systems supported by the EFT-ESW System. Dose to the public and the Control Room operators are not affected by the proposed change. The proposed general LCO [limiting condition for operation] provides direction with respect to actions to be taken when support systems are inoperable.

The proposed Technical Specification change does not introduce new equipment operating modes, nor does the proposed change alter existing system relationships. The proposed amendment does not introduce new failure modes.

Therefore, the proposed amendment will not significantly increase the probability or the consequences of an accident previously evaluated.

The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed Technical Specification change does not introduce new equipment operating modes, nor does the proposed change alter existing system relationships. The proposed amendment does not introduce new failure modes. The proposed amendment does not alter the equipment required for accident mitigation and considers the effects on supported systems when a support system is inoperable. When support systems are inoperable, actions are specified to be taken consistent with safe plant operation.

Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed amendment provides specifications for the EFT–ESW System which are consistent with current Technical Specification requirements for other equipment. The proposed changes ensure that the EFT–ESW and other support systems will be available when required and provides adequate alternative actions when the support systems are not available. The allowed outage times for the EFT-ESW Pumps are consistent with that allowed for other equipment that would have similar importance to accident mitigation. The proposed general LCO does not result in a significant reduction in the margin of safety since it imposes requirements already in technical specifications for support systems included in technical specifications. In cases where support systems [are] not included in technical specifications, the proposed general LCO does not apply and actions determined to be required by the technical specifications will be taken for the supported systems.

Therefore, the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Section Chief: Claudia M. Craig.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: September 5, 2000.

Description of amendment request: The proposed amendment would revise the Fort Calhoun Station, Unit No. 1 (FCS) Technical Specifications (TS) to change the definition section, TS

Sections 2.10, 3.10, and 5.9, and the Bases of TS 1.1 and 1.3, to allow the use of nuclear fuel fabricated by Siemens Power Corporation at FCS. The definition of unrodded planar radial peaking factor (F_{xy}) and TS 2.10.4(3) are being deleted and TS 3.10 is being revised to reflect the deletion of this peaking factor. TS 5.9.5 is being revised to incorporate NRC-approved methodologies necessary to determine core operating limits with nuclear fuel from Siemens Power Corporation. The Bases to TS 1.1 and 1.3 are being revised to delete the discussion of the CE–1 correlation that is currently used to calculate minimum departure from nucleate boiling ratio and the value calculated by this method.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment is to incorporate Siemens Power Corporation topical reports for conducting reload analyses that have been previously reviewed and approved by the NRC. The applicable FCS Technical Specifications (TS) supported by these topical reports are being revised. These changes are necessary to support using nuclear fuel supplied by Siemens Power Corporation.

It is proposed to revise the Bases of TS 1.1 and 1.3 to reflect changes in methodologies for calculating the minimum Departure from Nucleate Boiling Ration (DNBR). The proposed methodology for determining the minimum DNBR for fuel supplied by Siemens Power Corporation is the NRC-approved EMF–92–153(P)(A) and Supplement 1, HTP: Departure from Nucleate Boiling Correlation for High Thermal Performance Fuel. As stated in the Basis of TS 1.1, Fort Calhoun Station currently uses the NRC-approved CE–1 correlation with a minimum DNBR value of 1.18, which provides a 95% probability at a 95% confidence level that DNB will not occur for any operating condition. For Siemens fuel, using the HTP correlation with a minimum DNBR of 1.14, as proposed, will continue to provide a 95% probability at a 95% confidence level that DNB will not occur during any operating condition. The CE–1 correlation is more restrictive than the HTP correlation that will be used to predict the minimum DNBR limits for the Siemens fuel. For a given set of reactor coolant conditions, the CE–1 correlation provides a lower critical heat flux than the HTP correlation. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.

It is proposed that the total planar radial peaking factor, F_{xy}^T, be eliminated from the Technical Specifications. The current need for this parameter is to protect assumptions about the maximum amount of planar peaking in the core. The limitation on the total planar radial peaking factor, F_{xy}^T, is provided to ensure that the assumptions used in the analysis for establishing the Linear Heat Rate and Local Power Density—High, Limiting Conditions for Operation, and Limiting Safety Systems Settings set-points remain valid during operation. In a two-dimensional set-point analysis, as currently conducted, F_{xy}^T is combined with the maximum axial power profile (F_z) to produce the maximum allowable peaking factor (F_q) or equivalent Linear Heat Rate. This ensures conservative operation relative to assumptions on linear heat rate used as input to the loss of coolant accident and other transient analyses. In a three-dimensional analysis, as proposed with the use of Siemens methodology, these peaks are calculated directly during a series of pre-determined maneuvers (axial shape oscillation, power maneuver, or other transient).

Direct calculation of these peaks negates the need to make inferences about the amount of planar radial peaking that occurs in any particular plane within the core. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.

It is proposed to add NRC-approved methodologies from Siemens Power Corporation to TS that are necessary to evaluate core parameters. The proposed additions of NRC-approved topical reports to the TS do not modify the manner in which the topical reports may be implemented. The core operating limits will continue to be determined using NRC-approved analytical methods. The plant will continue to operate within the limits specified by the Core Operating Limits Report and will take corrective actions as required by the current Technical Specifications should these limits be exceeded. Therefore, these changes will not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new or different modes of operation are proposed as a result of these changes. The proposed revisions do not change any equipment required to mitigate the consequences of an accident. The proposed additions of NRC-approved topical reports to the TS do not modify the manner in which the topical reports may be implemented. The plant will continue to operate within the limits specified by the Core Operating Limits Report and will take corrective actions as required should these limits be exceeded. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

As required by TS 5.9.5, the analytical methods used to determine the core operating limits shall be those previously reviewed and approved by the NRC. The proposed changes incorporate methodologies applicable for use with fuel supplied by Siemens Power Corporation that have been approved by the NRC as documented by Safety Evaluation Reports. Technical Specification 5.9.5 also requires that the core operating limits shall be determined so that all applicable limits of the safety analysis are met. These requirements will continue to be met. Therefore, OPPD concludes that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Perry D. Robinson, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: October 18, 2000.

Description of amendment request: The proposed amendment would revise the Fort Calhoun Station Unit 1 (FCS) Technical Specifications (TSs) to (1) extend the validity of the existing TS Figure 2–1A (RCS [reactor coolant system] Pressure-Temperature Limits for Heatup) and Figure 2–1B (RCS Pressure-Temperature Limits for Cooldown) from

20.0 effective full power years (EFPY) to 24.25 EFPY, (2) delete Figure 2–3 (Predicted Radiation Induced NDTT [nil ductility transition temperature] Shift), and (3) provide replacement guidance in TSs 2.1.2(6)(a) and (b) for use of the most current fluence analysis and Regulatory Guide 1.99, Revision 2, "Radiation Embrittlement of Reactor Vessel Materials," for projecting reference temperature nil ductility (RT_{NDT}) at 24.25 EFPY. The proposed amendment would also revise the associated Bases section of TS 2.1.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The NRC previously approved Technical Specification Amendment No. 161 in March 1994 for the use of RCS Pressure-Temperature (P–T) Limits good to 20.0 EFPY. The proposed changes in this submittal reflect the validity of these same curves from 20.0 EFPY to 24.25 EFPY based on the implementation of extreme low radial leakage fuel management in 1992 (Cycle 14). Significant reductions in the fast neutron flux to the limiting 3–410 axial weld in the Fort Calhoun Station reactor pressure vessel were obtained, thus significantly increasing the time to when the fast neutron fluence input to the derivation of the previously approved P–T curves will be reached. Since no inputs (including assumed material properties of the limiting weld) to the existing analysis are being changed, extension of the validity of the curves from 20.0 EFPY to 24.25 EFPY is justified. In addition, deletion of Figure 2–3 and references to it are proposed. This proposed change removes an outdated figure which is non-operational in nature. The application of the current Regulatory Guide 1.99, Revision 2 is more appropriate for these purposes. Administrative changes to the Basis section of TS 2.1.2 are proposed to reflect the extension to 24.25 EFPY.

No accidents previously analyzed are affected by these changes, and it can be concluded that there is no significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not physically alter the configuration of the plant and no new or different mode of operation is proposed. Extending the validity of the P–T curves more accurately projects reactor vessel embrittlement by accounting for improvements in FCS fuel management which have significantly reduced the fast neutron fluence to the limiting 3–410 axial weld, incorporates improved operating cycle efficiency, and applies the WCAP–15443, Revision 0 fluence analysis. The revised fluence analysis uses the ENDF/B–VI Nuclear Cross Section Library. Deletion of Figure 2–3 represents a change which does not affect plant operations. Figure 2–3 is administrative in nature, and proposed revisions to Specifications 2.1.2(6)(a) and (b) provide guidance consistent with the current Regulatory Guide for P–T curves updates. Update of the Technical Specification 2.1.2 Basis section represents an administrative change that does not affect plant operation.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes to extend the validity of Technical Specification Figures 2–1A and 2–1B to 24.25 EFPY are consistent with the extreme low radial leakage fuel management implemented in 1992 (Cycle 14) and performance/application of the updated fluence analysis described above. With no changes to the inputs of the existing P-T limits analysis, there is no reduction in the margin of safety. Figure 2–3 is not used to provide limits on plant operation, and deletion of this figure, which uses a pre-Regulatory Guide 1.99, Revision 2 embrittlement correlation, is considered an improvement in the consistency of the requirements outlined in the Technical Specifications. This Figure is not used in plant operation and provides only a general indication of the RT_{NDT} shift. The TS 2.1.2 Basis section changes are administrative in nature and do not affect the margin of safety. The changes serve to maintain consistency with the NRC approval of Amendment No. 161.

In summary, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Perry D. Robinson, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: October 27, 2000.

Description of amendment request: The proposed amendment would revise Section 3.7 of the Fort Calhoun Station Unit 1 Technical Specifications to eliminate item 3.7(4) "13.8 Kv Transmission Line" which states: "The 13.8 Kv transmission line will be energized and loaded to minimum shutdown requirements at each refueling outage following installation."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Eliminating the 13.8 kV testing requirement would have no impact upon the probability of an accident previously evaluated. The circuit breaker connecting the 13.8 kV power supply to the station electrical busses is normally open, so this power supply could not play a role in the initiation of any accident.

Eliminating the 13.8 kV testing requirement would have no impact upon the consequences of an accident previously evaluated. Existing accident analyses take no credit for the 13.8 kV power supply.

The 13.8 kV power supply is not credited for mitigation of licensing basis transients or postulated events added to the USAR [Updated Safety Analysis Report] by NRC requirements, such as Station Blackout (SB0).

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The 13.8 kV power supply is only capable of supplying a limited number of components in the unlikely event that 161 kV, 345 kV, and the diesel-generators are unavailable. Eliminating the 13.8 kV testing requirement would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Testing of the 13.8 kV power supply, as described in Technical Specification 3.7(4), is unrelated to any margin of safety. Therefore, deletion of the testing requirement will not reduce any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Perry D. Robinson, Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: November 30, 2000.

Description of amendment requests: The proposed license amendments would change Technical Specification Section 3.5.1, "Accumulators," by revising the limits for accumulator borated water volume (Surveillance Requirement (SR) 3.5.1.2) and nitrogen cover pressure (SR 3.5.1.3) to reflect analysis limits. These TS currently reflect nominal limits. These amendments are revising TS values consistent with other similar TS parameters which will aid in future clarity.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The accumulators only function following an accident. They cannot initiate an accident. The proposed changes have no impact to plant operation and are administrative in nature. Changing the technical specification (TS) limits for accumulator volume and pressure from nominal to analysis values will provide greater consistency within the TS. Changing the volume limits to cubic feet verse[u]s percent level will eliminate any potential for future revision of these limits because of instrument tap relocation.

Plant parameters will continue to be administratively controlled within the allowed analysis parameters. The proposed limits for tank volume and nitrogen cover pressure are consistent with analysis values documented in the Final Safety Analysis Report and assume that the accident consequences remain unchanged.

There are no hardware changes or changes in the method by which any safety-related plant system performs its safety function.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The accumulators only function following an accident. They cannot initiate an accident. The proposed changes are administrative in nature.

There are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. The changes are administrative in nature so there are no new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are [sic] introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes are administrative in nature.

The proposed changes do not affect the acceptance criteria for any analyzed event. There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: November 30, 2000.

Description of amendment requests: The proposed license amendments would change the administrative controls sections of Technical Specification (TS) 5.5.14b and 5.5.14b.2 to incorporate the changes made to 10 CFR Part 50, Section 50.59. The proposed amendments would replace the word "involve" with "require" in TS 5.5.14b and revise TS 5.5.14b.2 to delete the reference to "unreviewed safety question" and restate the requirement as "a change to the updated Final Safety Analysis Report or Bases that requires NRC approval pursuant to 10 CFR 50.59."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change replaces the word "involve" with "require" and deletes reference to the term "unreviewed safety question" consistent with 10 CFR [Part 50, Section] 50.59. Deletion of the term "unreviewed safety question" was approved by the NRC with the revision to 10 CFR 50.59. Consequently, the probability of an accident previously evaluated is not significantly increased. Changes to the Technical Specification (TS) Bases are still evaluated in accordance with 10 CFR 50.59. As a result, the consequences of any accident previously evaluated are not significantly affected.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing plant operation. These changes are considered administrative changes and do not modify, add, delete,

or relocate any technical requirements in the TS.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes will not reduce the margin of safety because they have no effect on any safety analyses assumptions. Changes to the TS Bases that result in meeting the criteria in paragraph (c)(2) of 10 CFR 50.59 will still require NRC approval. The proposed changes to TS 5.5.14 are considered administrative in nature based on the revision to 10 CFR 50.59.

Therefore, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

PECO Energy Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: October 25, 2000.

Description of amendment request: The amendment revises the Action Statements associated with Technical Specifications (TSs) Table 3.3.7.5–1 ("Accident Monitoring Instrumentation") concerning the Drywell Hydrogen/Oxygen (H_2/O_2) Concentration Analyzers, and the associated TS Bases. PECO Energy proposes to add new Action Statements 82a and 82b concerning channel operability, which will replace the current requirements of Action Statements 80a and 80b, respectively, for the Drywell Hydrogen/Oxygen Concentration Analyzers.

Under the existing TS Action Statements for Table 3.3.7.5–1 ("Accident Monitoring Instrumentation"), with the number of operable accident monitoring instrumentation channels less than the "required" number of channels (quantity 2), restore the inoperable channels within 7 days or be in at least hot shutdown within the following 12 hours (Action Statement 80a). Additionally, with the number of operable accident monitoring instrumentation channels less than the "minimum" number of channels (quantity 1), restore the inoperable channel(s) within 48 hours or be in at least hot shutdown within the following 12 hours (Action Statement 80b).

Proposed Action Statement 82a for Table 3.3.7.5–1 will extend the duration from 7 to 30 days for less than the "required" number operable of channels. Additionally, the proposed Action Statement 82a will require that if the operable channel(s) cannot be restored within the 30 days, then a Special Report shall be provided to the NRC within the following 14 days.

Proposed Action 82b for Table 3.3.7.5–1 will extend the duration from 48 hours to 72 hours for less than the "minimum" number of operable channels. If the inoperable channel(s) cannot be restored with the 72 hours, then be in hot shutdown with the next 12 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c).

1. The proposed [technical specification] TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes modify the Action Statements associated with the duration that the Drywell Hydrogen/Oxygen Concentration Analyzers can be inoperable. The Drywell Hydrogen/Oxygen Concentration Analyzers are not accident initiating equipment and are monitoring devices required to be available for monitoring hydrogen and oxygen following a LOCA. These analyzers do not perform any automatic or control functions. Therefore, the proposed changes will not increase the probability of an accident previously evaluated.

In the event of a failure of the Drywell Hydrogen/Oxygen Concentration Analyzers following a LOCA, concentrations of hydrogen and oxygen can be measured by utilizing grab samples with the post-accident sampling system. A single failure of either analyzer package would render that affected package inoperable with the redundant package fully capable of performing the required function at full capacity. Following a postulated LOCA, the hydrogen recombiners will be utilized to ensure that the oxygen concentration in the primary containment is maintained below the lower flammability limit as required by plan emergency procedures.

The extended completion times are based on the passive nature of the instrument (no critical automatic action is assumed to occur from these instruments), the low probability of an event requiring post-accident instrumentation during this interval, and the availability of alternate means to obtain the required information. Therefore, the proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed technical specification changes modify the Action Statements associated with the duration that the Drywell Hydrogen/Oxygen Concentration Analyzers can be inoperable. They do not change the design or configuration of the plant. The Drywell Hydrogen/Oxygen Concentration Analyzers are not accident initiating equipment, and are monitoring devices required to be available for monitoring hydrogen and oxygen following a LOCA. The proposed changes do not create a system-level failure mode different than those that already exist. In addition, there are no operation or failure modes of the Drywell Hydrogen/Oxygen Concentration Analyzers that are accident initiators. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in the margin of safety.

The proposed changes in Action Statements do not affect any safety limits or analytical limits. There are also no changes to accident of transient core thermal hydraulic conditions, minimum combustible concentration limits, or fuel or reactor coolant boundary design limits, as a result of these proposed changes. The proposed Technical Specification changes modify the Action Statements associated with the duration that the Drywell Hydrogen/Oxygen Concentration Analyzers can be inoperable. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J.W. Durham, Sr., Esquire, Senior V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: James W. Clifford.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: November 29, 2000.

Description of amendment request: The proposed amendment would revise the Technical Specifications to reflect the enabling of the Oscillation Power Range Monitor (OPRM) instrumentation reactor protection system (RPS) trip function. The OPRM is designed to detect the onset of reactor core power oscillations resulting from thermal-hydraulic instability and suppresses them by initiating a reactor scram via the RPS trip logic.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change specifies limiting conditions for operations, required actions and surveillance requirements of the OPRM system and allows operation in regions of the power to flow map currently restricted by the requirements of Interim Corrective Actions (ICAs) and certain limiting conditions of operation of Technical Specifications (TS) 3.4.1. The OPRM system can automatically detect and suppress conditions necessary for thermal-hydraulic (T–H) instability. A T–H instability event has the potential to challenge the Minimum Critical Power Ratio (MCPR) safety limit. The restrictions of the ICAs and TS 3.4.1 were imposed to ensure adequate capability to detect and suppress conditions consistent with the onset of T–H oscillations that may develop into a T–H instability event. With the installation of the OPRM System, these restrictions are no longer required.

The probability of a T–H instability event is most significantly impacted by power to flow conditions such that only during operation inside specific regions of the power to flow map, in combination with power shape and inlet enthalpy conditions, can the occurrence of an instability event be postulated to occur. Operation in these regions may increase the probability that operation with conditions necessary for a T–H instability can occur.

However, when the OPRM is operable with operating limits as specified in the COLR [Core Operating Limits Report], the OPRM can automatically detect the imminent onset of local power oscillations and generate a trip signal. Actuation of an RPS trip will suppress conditions necessary for T–H instability and decrease the probability of a T–H instability event. In the event the trip capability of the OPRM is not maintained, the proposed change includes actions which limit the period of time before the effected OPRM channel (or RPS system) must be placed in the trip condition. If these actions would result in a trip function, an alternate method to detect and suppress thermal hydraulic oscillations is required. In either case the duration of this period of time is limited such that the increase in the probability of a T–H instability event is not significant. Therefore the proposed change does not result in a significant increase in the probability of an accident previously evaluated.

An unmitigated T–H instability event is postulated to cause a violation of the MCPR safety limit. The proposed change ensures mitigation of T–H instability events prior to challenging the MCPR safety limit if initiated from anticipated conditions by detection of the onset of oscillations and actuation of an RPS trip signal. The OPRM also provides the capability of an RPS trip being generated for T–H instability events initiated from unanticipated but postulated conditions. These mitigating capabilities of the OPRM system would become available as a result of the proposed change and have the potential to reduce the consequences of anticipated and postulated T–H instability events. Therefore, the proposed change does not significantly increase the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change specifies limiting conditions for operations, required actions and surveillance requirements of the OPRM system and allows operation in regions of the power to flow map currently restricted by the requirements of ICAs and TS 3.4.1. The OPRM system uses input signals shared with APRM and rod block functions to monitor core conditions and generate an RPS trip when required. Quality requirements for software design, testing, implementation and module self-testing of the OPRM system provide assurance that no new equipment malfunctions due to software errors are created. The design of the OPRM system also ensures that neither operation nor malfunction of the OPRM system will adversely impact the operation of other systems and no accident or equipment malfunction of these other systems could cause the OPRM system to malfunction or cause a different kind of accident. Therefore, operation with the OPRM system does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Operation in regions currently restricted by the requirements of ICAs and TS 3.4.1 is within the nominal operating domain and ranges of plant systems and components for which postulated equipment and accidents have been evaluated. Therefore operation within these regions does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change which specifies limiting conditions for operations, required actions and surveillance requirements of the OPRM system and allows operation in certain regions of the power to flow map does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change specifies limiting conditions for operations, required actions and surveillance requirements of the OPRM system and allows operation in regions of the power to flow map currently restricted by the requirements of ICAs and TS 3.4.1.

The OPRM system monitors small groups of LPRM signals for indication of local variations of core power consistent with T–H oscillations and generates an RPS trip when conditions consistent with the onset of oscillations are detected. An unmitigated T–H instability event has the potential to result in a challenge to the MCPR safety limit. The OPRM system provides the capability to automatically detect and suppress conditions which might result in a T–H instability event and thereby maintains the margin of safety by providing automatic protection for the MCPR safety limit while significantly reducing the burden on the control room operators. In the event the trip capability of the OPRM is not maintained, the proposed change includes actions which limit the period of time before the effected OPRM channel (or RPS system) must be placed in the trip condition. If these actions

would result in a trip function, an alternate method to detect and suppress thermal hydraulic oscillations is required. Since, in either case, the duration of this period of time is limited so that the increase in the probability of a T–H instability event is not significant. Operation with the OPRM system does not involve a significant reduction in a margin of safety.

Operation in regions currently restricted by the requirements of ICAs and TS 3.4.1 is within the nominal operating domain assumed for identifying the range of initial conditions considered in the analysis of anticipated operational occurrences and postulated accidents. Therefore, operation in these regions does not involve a significant reduction in the margin of safety.

The proposed change, which specifies limiting conditions for operations, required actions and surveillance requirements of the OPRM system and allows operation in certain regions of the power to flow map, does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: November 21, 2000 (ULNRC–04346)

Description of amendment request: The proposed amendment request would change Table 3.3.2–1, "Engineered Safety Feature Actuation System Instrumentation," of the Technical Specifications. The change would add Surveillance Requirement (SR) 3.3.2.10 to the SRs for the following two engineered safety feature actuation system (ESFAS) instrumentation in the table: item f, loss of offsite power, and item h, auxiliary feedwater pump suction transfer on suction pressure—low. The licensee also identified that there would be changes to the Final Safety Analysis Report (FSAR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since there are no hardware changes. The Reactor Trip System (RTS) and Engineered Safety Feature Actuation System (ESFAS) instrumentation will be unaffected. These protection systems will continue to function in a manner consistent with the plant design basis. All design, material, and construction standards that were applicable prior to the request are maintained.

The proposed change imposes more stringent surveillance testing requirements to ensure safety-related structures, systems, and components are tested in a manner consistent with the safety analysis and licensing basis.

The proposed change will not affect the probability of any event initiators. There will be no degradation in the performance of, or an increase in the number of challenges imposed on, safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance.

The proposed change will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the FSAR.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. This change will not affect the normal method of plant operation or change any operating parameters. No performance requirements will be affected; however, the proposed change does impose additional surveillance testing requirements. These additional requirements are consistent with assumptions made in the safety analysis and licensing basis.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this change. There will be no adverse effect or challenges imposed on any safety-related system as a result of this change.

This change does not alter the design or performance of the 7300 Process Protection System, Nuclear Instrumentation System, or Solid State Protection System used in the plant protection systems.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor (F_Q), nuclear enthalpy rise hot channel factor (FdeltaH), loss of coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the [NRC] Standard Review Plan [(NUREG–0800)] will continue to be met.

The imposition of more stringent surveillance requirements [in the change] increase the margin of safety by ensuring that the affected safety analysis assumptions on equipment response time are verified on a periodic frequency.

Therefore, the proposed change does not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: November 22, 2000.

Description of amendment request: The proposed change to Callaway Technical Specification (TS) 5.5.14, which ensures that a program exists for processing changes to the TS Bases, would replace the word "involve" with "require" and deletes the phrase "unreviewed safety question" as

defined in 10 CFR Part 50, Section 50.59.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes replace the word "involve" with "require" and deletes the phrase "unreviewed safety question" as defined in 10 CFR 50.59. The above changes are consistent with the revision to 10 CFR 50.59. Consequently, the probability of an accident previously evaluated is not significantly increased. Changes to the Technical Specification Bases are still evaluated in accordance with 10 CFR 50.59. As a result, the consequences of any accident previously evaluated are not affected.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing plant operation. These changes are considered administrative changes and do not modify, add, delete, or relocate any technical requirements in the TS.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes will not reduce the margin of safety because they have no effect on any safety analyses assumptions. Changes to the TS Bases that result in meeting the criteria in paragraph (c)(2) of 10 CFR 50.59 will still require NRC approval. The proposed changes to TS 5.5.14 are considered administrative in nature based on the revisions to 10 CFR 50.59.

Therefore, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: December 7, 2000 (ET 00–0041).

Description of amendment request: The proposed amendment request would change Table 3.3.2–1, "Engineered Safety Feature Actuation System Instrumentation," of the Technical Specifications (TSs). The change would add Surveillance Requirement (SR) 3.3.2.10 to the SRs for the following two engineered safety feature actuation system (ESFAS) instrumentation in the table: item 6.f, loss of offsite power, and item 6.h, auxiliary feedwater pump suction transfer on suction pressure—low. The licensee also identified that there would be changes to the Updated Safety Analysis Report (USAR) and changes to the Bases for the TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since there are no hardware changes. The Reactor Trip System (RTS) and Engineered Safety Feature Actuation System (ESFAS) instrumentation will be unaffected. These protection systems will continue to function in a manner consistent with the plant design basis. All design, material, and construction standards that were applicable prior to the request are maintained.

The proposed change imposes more stringent surveillance testing requirements to ensure safety related structures, systems, and components are tested in a manner consistent with the safety analysis and licensing basis.

The proposed change will not affect the probability of any event initiators. There will be no degradation in the performance of, or an increase in the number of challenges imposed on, safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance.

The proposed change will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the USAR.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no hardware changes nor are there any changes in the method by which any safety related plant system performs its safety function. This change will not affect the normal method of plant operation or change any operating parameters. No performance requirements will be affected; however, the proposed change does impose additional surveillance testing requirements. These additional requirements are consistent with assumptions made in the safety analysis and licensing basis.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this change. There will be no adverse effect or challenges imposed on any safety related system as a result of this change.

This change does not alter the design or performance of the 7300 Process Protection System, Nuclear Instrumentation System, or Solid State Protection System used in the plant protection systems.

Therefore, the proposed changes do not create a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor (F_Q), nuclear enthalpy rise hot channel factor (FdeltaH), loss of coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the [NRC] Standard Review Plan

[(NUREG–0800)] will continue to be met.

The imposition of more stringent surveillance testing requirements [in the change] increases the margin of safety by ensuring that the affected safety analysis assumptions on equipment response time are verified on a periodic frequency.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: March 19, 1999, and supplemented by letters dated April 17, May 5, June 16, July 26, and November 21, 2000.

Brief description of amendment: The amendment changes Technical Specification (TS) 1.40, "Spent Fuel Pool Storage Pattern"; 1.41, "3–OUT–OF–4 AND 4–OUT–OF–4"; 3/4.9.1.2, "Boron Concentration"; 3/4.9.7, "Crane Travel-Spent Fuel Storage Areas"; 3/4.9.13, "Spent Fuel Pool—Reactivity"; 3.9.14, "Spent Fuel Pool—Storage Pattern"; 5.6.1.1, "Design Features—Criticality"; and 5.6.3, "Design Features—Capacity." In addition, the amendment revises INDEX pages xii and xv for new figures and page numbers and replaces Figures 3.9–1 and 3.9–2 with four new figures and make changes to the TS Bases consistent with changes to their respective TS sections.

Date of issuance: November 28, 2000.

Amendment No.: 189.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Facility Operating License No. NPF–49: Amendment revised the Technical Specifications.

Date of individual notice in **Federal Register:** December 4, 2000 (65 FR 75736).

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: November 22, 1999, as supplemented November 24, 1999 and September 12, 2000.

Brief description of amendments: The amendments revise Technical Specification 5.5.11, "Ventilation Filter Testing Program" for laboratory testing of charcoal in engineered safety feature ventilation systems to reference American Society for Testing and Materials D3803–1989 "Standard Test Method for Nuclear-Grade Activated Carbon."

Date of issuance: December 7, 2000.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 238 and 212.

Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 29, 1999 (64 FR 73085)

The November 24, 1999, and September 12, 2000, submittals provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated December 7, 2000.

No significant hazards consideration comments received: No.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: September 15, 2000.

Brief description of amendments: The amendments implement Technical Specification Task Force (TSTF)–134, Revision 1. TSTF–134 revises Technical Specification Surveillance Requirements (SR) 3.1.7.2 which verifies control element assembly (CEA) trip function from 50 percent withdrawn position, by adding a note allowing SR 3.1.7.2 not be performed if TS SR 3.1.4.6 (CEA drop time test) has been met. TSTF–134, Revision 1, was approved by the Nuclear Regulatory Commission on April 21, 1998.

Date of issuance: December 11, 2000.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment Nos.: 239 and 213.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 18, 2000 (65 FR 62384).

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated December 11, 2000.

No significant hazards consideration comments received: No.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: May 5, 1999, as supplemented on December 22, 1999, and September 18, 2000.

Brief description of amendment: The amendment revises Technical Specification (TS) 3.5, "Instrumentation Systems," for the reactor protection system and engineered safety features actuation system instrumentation. Specifically, the amendment: (1) Revises the allowed outage times for the instrumentation, (2) allows on-line testing and maintenance of instrumentation, and (3) revises the associated Bases section. The amendment also includes several editorial changes to TS Tables 3.5–2 and 3.5–3.

Date of issuance: November 30, 2000.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 212.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 4, 2000 (65 FR 59221).

The December 22, 1999, and September 18, 2000, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 30, 2000.

No significant hazards consideration comments received: No.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: August 22, 2000, as supplemented on October 3 and 15, 2000.

Brief description of amendment: The amendment revises: (1) Technical Specification (TS) 3.10.4, "Rod Insertion Limits," to allow on-line calibration of the rod position indicator (RPI) channels during operating cycle 15, and (2) TS 3.10.6, "Inoperable Rod Position Indicator Channels," to allow extended RPI deviation limits during cycle 15.

Date of issuance: December 12, 2000.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 213.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 20, 2000 (65 FR 56948).

The October 3 and 15, 2000, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 12, 2000.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: February 21, 2000.

Brief description of amendment: This amendment deleted references to stainless steel as the material for reactor coolant system and reactor coolant pressure boundary component fasteners from Table 1.8–1 and 1.8–2 of the Beaver Valley Power Station, Unit No. 1, Updated Final Safety Analysis Report (UFSAR).

Date of issuance: December 4, 2000.

Effective date: As of date of issuance.

Amendment No.: 235.

Facility Operating License No. DPR–66: Amendment authorized changes to the UFSAR.

Date of initial notice in **Federal Register:** June 14, 2000 (65 FR 37426).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 4, 2000.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: July 19, 2000.

Brief description of amendment: The amendment revises the Technical Specifications (TS) surveillance requirements of the safety-related ventilation system charcoal consistent with the actions requested in Generic Letter 99–02, "Laboratory Testing of Nuclear-Grade Activated Charcoal," dated June 3, 1999. Systems impacted include the control room emergency ventilation system, the shield building ventilation system, the emergency core cooling system area ventilation system, and the fuel pool ventilation system—fuel storage.

Date of Issuance: December 7, 2000.

Effective Date: December 7, 2000.

Amendment No.: 167.

Facility Operating License No. NPF–16: Amendment revised the TS.

Date of initial notice in **Federal Register:** August 9, 2000 (65 FR 48749).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 7, 2000.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: June 21, 2000.

Brief description of amendments: These amendments relocate Technical Specification (TS) Surveillance Requirement 4.8.1.1.2.e.1, regarding the emergency diesel generator (EDG) inspection program, to a licensee controlled maintenance program that will be incorporated by reference into the next revision of the Updated Final Safety Analysis Report for each St. Lucie unit. Upon relocation to the licensee controlled maintenance program, the effectiveness of the maintenance on the EDGs and support systems will be monitored pursuant to the Maintenance Rule 10 CFR 50.65.

Date of Issuance: December 7, 2000.

Effective Date: December 7, 2000.

Amendment Nos.: 168 and 111.

Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the TS.

Date of initial notice in **Federal Register:** August 9, 2000 (65 FR 48750).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 7, 2000.

No significant hazards consideration comments received: No.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: November 30, 1999, as supplemented June 28, 2000, and November 3, 2000.

Brief description of amendment: The amendment revises Technical Specifications Sections 3.7.2, "Control Room Envelope Filtration (CREF) System," and 5.5.7, "Ventilation Filter Testing Program (VFTP)" for laboratory testing of charcoal filters to reference American Society for Testing and Materials standard D3803–1989, "Standard Test Method for Nuclear-Grade Activated Carbon."

Date of issuance: December 1, 2000.

Effective date: As of the date of issuance to be implemented within 30 days of issuance.

Amendment No.: 95.

Facility Operating License No. NPF–69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** August 23, 2000 (65 FR 51358).

The November 3, 2000, submittal did not change the initial proposed no significant hazards consideration determination.

The staff's related evaluation of the amendment is contained in a Safety Evaluation dated December 4, 2000.

No significant hazards consideration comments received: No.

Power Authority of the State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: May 11 and May 12, 2000, as supplemented by letters dated June 13, June 16, July 14, September 21, October 26, and November 3, 2000.

Brief description of amendment: The amendment grants a conforming amendment to the License and the Technical Specifications for the approval of the transfer of the license for the Indian Point Nuclear Generating Unit No. 3 (IP3) held by the Power Authority of the State of New York to Entergy Nuclear IP3, LLC. to possess and use IP3 and to Entergy Nuclear Operations, Inc. (ENO) to possess, use and operate IP3.

Date of issuance: November 21, 2000.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 203.

Facility Operating License No. DPR–64: Amendment revised the License and the Technical Specifications.

Date of initial notice in **Federal Register:** June 28, 2000 (65 FR 39954).

The supplemental information did not expand the scope of the application as originally noticed in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 9, 2000.

No significant hazards consideration comments received: No.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: May 11 and May 12, 2000, as supplemented by letters dated June 13, June 16, July 14, September 21, October 26, and November 3, 2000.

Brief description of amendment: The amendment grants a conforming amendment to the License and the Technical Specifications for the approval of the transfer of the license for the James A. FitzPatrick Nuclear Power Plant (FitzPatrick) held by the Power Authority of the State of New York to Entergy Nuclear FitzPatrick, LLC. to possess and use FitzPatrick and to Entergy Nuclear Operations, Inc. (ENO) to possess, use and operate FitzPatrick.

Date of issuance: November 21, 2000.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 268.

Facility Operating License No. DPR–59: Amendment revised the License and the Technical Specifications.

Date of initial notice in **Federal Register:** June 28, 2000 (65 FR 39953).

The supplemental information did not expand the scope of the application as originally noticed in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 9, 2000.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: February 7, 2000, as supplemented on August 9 and October 12, 2000.

Brief description of amendments: The amendments modify the Salem Unit Nos. 1 and 2 Technical Specifications (TS), and revise surveillance requirements associated with Auxiliary Feedwater (AFW) Pump testing described in TS 4.7.1.2.b by replacing the current wording with that of improved Standard TSs, NUREG–1431, "Standard Technical Specifications, Westinghouse Plants."

Date of issuance: December 5, 2000.

Effective date: As of the date of issuance, and shall be implemented within 60 days of issuance.

Amendment Nos.: 238 and 219.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 14, 2000 (65 FR 37428).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 5, 2000.

No significant hazards consideration comments received: No.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: March 8, 2000, as supplemented April 5, 2000, and October 25, 2000.

Brief description of amendment: The amendment revises the Technical Specifications through revision to the storage configuration requirements within the existing storage racks and taking credit for a limited amount of soluble boron.

Date of issuance: December 7, 2000.

Effective date: December 7, 2000.

Amendment No.: 79.

Facility Operating License No. DPR–18: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 5, 2000 (65 FR 17918).

The April 5, 2000, and October 25, 2000, submittals provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 7, 2000.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–390 and 50–391, Watts Bar Nuclear Plant Units 1 and 2, Rhea County, Tennessee

Date of application for amendment: March 10, 2000, as supplemented November 6 and 9, 2000 and November 21, 2000 (two letters).

Brief description of amendment: Changed the Operating License to incorporate Physical Security/ Contingency Plan—Tamper Indicating/ Line Supervision Alarms Testing Frequency at Watts Bar Nuclear Plant (WBN) Units 1 and 2.

Date of issuance: December 5, 2000.
Effective date: December 5, 2000.
Amendment No.: 29 and 29.
Facility Operating License No. NPF–90: Amendment revises the Operating License.
Date of initial notice in **Federal Register:** September 20, 2000 (65 FR 56957). The November 6, 9, and 21, 2000, supplements provided clarifying information that did not change the scope of the initial proposed no significant hazards consideration determination.
No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: October 30, 2000, as supplemented November 15 and 22, 2000.
Brief description of amendment: Allow a one-time-only increase in the diesel generator Action Completion Time from 72 hours to 10 days to facilitate repairs to an emergency diesel generator to improve reliability.
Date of issuance: December 8, 2000.
Effective date: December 8, 2000.
Amendment No.: 30.
Facility Operating License No. NPF–90: Amendment revises the Technical Specifications.
Date of initial notice in **Federal Register:** November 3, 2000 (65 FR 66266). The November 15 and 22, 2000 supplements provided clarifying information that did not change the scope of the initial proposed no significant hazards consideration determimination.
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 8, 2000.
No significant hazards consideration comments received: No.

TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: August 10, 2000.
Brief description of amendments: The amendments change Technical Specification (TS) 5.6.5, "Core Operating Limits Report," to incorporate the latest, Nuclear Regulatory Commission (NRC)-approved methodology for analysis of large break loss-of-coolant accidents (LBLOCAs) for Comanche Peak Steam Electric Station, Units 1 and 2. The acceptability of this change to TS 5.6.5 is based upon the NRC staff's conclusion that the LBLOCA analysis methodology described in TXU Electric's Topical Report ERX–2000–002–P, "Revised Large Break Loss of Coolant Accident Methodology," March 2000, is acceptable, as addressed in the associated Safety Evaluation.
Date of issuance: October 6, 2000.
Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.
Amendment Nos.: 80 and 80.
Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 23, 2000 (65 FR 51363).
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 6, 2000.
No significant hazards consideration comments received: No.

TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: May 2, 2000, as supplemented August 30, 2000.
Brief description of amendments: The amendments change the CPSES Security Plan to: (1) Allow response team members to perform compensatory measures for protective area intrusion detection or closed circuit television failure, and (2) to modify the patrol frequency for the protected area.
Date of issuance: December 5, 2000.
Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.
Amendment Nos.: 82 and 82.
Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Security Plan.
Date of initial notice in **Federal Register:** October 4, 2000 (65 FR 59226).
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 5, 2000.
No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 21st day of December 2000.
For the Nuclear Regulatory Commission.
John A. Zwolinski,
Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.
[FR Doc. 00–33012 Filed 12–26–00; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting: January 30–31, 2001—Amargosa Valley, Nevada: Discussions of the Status of DOE Studies Related to a Potential Yucca Mountain, Nevada, Repository for Spent Nuclear Fuel and High-Level Radioactive Waste; Update on Scientific and Engineering Studies Undertaken at the Yucca Mountain site; and Update on the DOE's Development of a Safety Strategy for a Potential Yucca Mountain Repository

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, on Tuesday and Wednesday, January 30 and January 31, 2001, the Nuclear Waste Technical Review Board (Board) will be in Amargosa Valley, Nevada, to discuss U.S. Department of Energy (DOE) efforts to characterize a site at Yucca Mountain, Nevada, as the possible location of a permanent repository for spent nuclear fuel and high-level radioactive waste. The Board will ask the DOE to address several questions about important technical and scientific issues related to evaluating the suitability of the potential repository site. The meeting is open to the public, and several opportunities for public comment will be provided. The Board is charged by Congress with reviewing the technical and scientific validity of DOE activities related to civilian radioactive waste management.
The Board meeting will be held at the Longstreet Inn, HCR 70, Box 559, Amargosa Valley, Nevada. The telephone number is (775) 372–1777; the fax number is (775) 372–1280. The meeting will start at 8:00 a.m. on both days and will be open to the public.
Representatives of Nye County will lead off the meeting on Tuesday, January 30, with a greeting, which will be followed by the introduction of the Acting Director of the DOE's Office of Civilian Radioactive Waste Management and the General Manager of the new contractor for the Yucca Mountain Project, Bechtel SAIC Company LLC. The Board also will hear from Dr. Jean-Claude Duplessy, a member of France's National Scientific Evaluation Committee (CNE), which oversees the scientific and technical activities of the French nuclear waste disposal program. During the rest of the morning session, the DOE will make presentations on the status of the Yucca Mountain Project. It will give a general overview of the program and discuss plans for issuing the site recommendation consideration report. The DOE then will address a specific question from the Board dealing

with the analysis of water flow in the unsaturated zone above the proposed repository. After lunch, the Board will ask the DOE to focus on four questions from the Board, dealing in turn with waste package corrosion, repository design, the flow of water in the saturated zone below the proposed repository, and the DOE's analysis of effects of early waste package failures.

On Wednesday, January 31, the DOE will update the Board on ongoing scientific and engineering studies related to the Yucca Mountain site. The update will be followed by a briefing on DOE plans for developing a capability to monitor and confirm its projected behavior of the repository system. The DOE will explain how it intends to create a "learning organization." The DOE also will discuss the status of its efforts to quantify uncertainty in its performance assessments of the proposed Yucca Mountain repository. After lunch, the DOE will discuss the latest version of its repository safety strategy. Nye County will update results obtained from the its Early Warning Drilling Program. The Electric Power Research Institute will describe its latest performance assessment of a proposed Yucca Mountain repository.

Opportunities for public comment will be provided before the lunch breaks and at the end of the sessions on both days. In addition, interested parties are invited to join Board members for coffee from 7:15 a.m. to 7:55 a.m. on Wednesday, January 31, at the Longstreet Inn. Those wanting to speak during the public comment periods are encouraged to sign the "Public Comment Register" at the check-in table. A time limit may have to be set on individual remarks, but written comments of any length may be submitted for the record. Interested parties also will have the opportunity to submit questions in writing to the Board. As time permits, the questions will be answered during the meeting.

A detailed agenda will be available approximately one week before the meeting. Copies of the agenda can be requested by telephone or obtained from the Board's Web site at *http://www.nwtrb.gov*. Transcripts of the meeting will be available on the Board's Web site, via e-mail, on computer disk, and on a library-loan basis in paper format from Davonya Barnes of the Board staff, beginning on March 2, 2001.

A block of rooms have been reserved at the Longstreet Inn. When making a reservation, please state that you are attending the Nuclear Waste Technical Review Board meeting. For more information, contact the NWTRB, Karyn Severson, External Affairs; 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201–3367; (tel) 703–235–4473; (fax) 703–235–4495; (e-mail) info@nwtrb.gov.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987. The Board's purpose is to evaluate the technical and scientific validity of activities undertaken by the Secretary of Energy related to managing the disposal of the nation's spent nuclear fuel and high-level radioactive waste. In the same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, to determine its suitability as the location of a potential repository for the permanent disposal of spent nuclear fuel and high-level radioactive waste.

Dated: December 21, 2000.

Joyce M. Dory,

Acting Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 00–32996 Filed 12–26–00; 8:45 am]

BILLING CODE 6820–AM–M

POSTAL SERVICE

Privacy Act of 1974, System of Records

AGENCY: Postal Service.

ACTION: Notice of new system of records.

SUMMARY: The purpose of this document is to publish notice of a new Privacy Act system of records, USPS 040.060, Customer Programs-Customer Electronic Bill Presentment and Payment Records. The new system contains records about individuals who use the Postal Service's electronic bill presentment and payment (EBP) service.

DATES: This proposal will become effective without further notice on February 5, 2001, unless comments received on or before that date result in a contrary determination.

COMMENTS DUE BY: February 5, 2001.

ADDRESSES: Any interested party may submit written comments on the proposed new system of records. Written comments on this proposal should be mailed or delivered to: Finance Administration/FOIA, United States Postal Service, 475 L'Enfant Plaza SW., RM 8141, Washington, DC 20260–5202. Copies of all written comments will be available at the above address for public inspection and photocopying between 8 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert J. Faruq, 202–268–2608.

SUPPLEMENTARY INFORMATION: The Postal Service is offering an electronic bill presentment and payment (EBP) service that allows customers to conveniently and securely register, access, and pay their bills through the Postal Service's WEB site *(http://www.usps.com)*. This notice establishes a new Privacy Act system of records, USPS 040.060, Customer Programs-Customer Electronic Bill Presentment and Payment Records, to cover individuals' records that are collected and maintained as a result of providing that service.

To use the EBP service, a customer registers once by providing identifying information, such as name, address, date of birth, telephone numbers, and e-mail address, that will be maintained in the system for that customer's transactions. Confirmation of registration and verification of the accuracy of information collected is sent by mail. Once registered, the customer can view all of his or her bill summaries that are registered with the service and navigate where applicable to the provider's or biller's site to obtain details of a particular bill. The customer then can return to the EBP service to pay that bill or any bills listed on the bill summary page. The EBP service also allows a customer to order the payment of a bill not registered with the service by providing the limited information needed for payment.

General routine use statements b, e, f, and j listed in the prefatory statement at the beginning of the Postal Service's published system notices apply to this system in that they are disclosures routinely necessary to conduct business. These include the need to disclose in litigation involving the Postal Service; to a contractor fulfilling an agency function; to a congressional office at the request of the record's subject; and to outside auditors in connection with an audit of Postal Service finances. These general routine uses were last published in the **Federal Register** on October 26, 1989 (54 FR 43654–43655).

In addition, five routine uses have been added. Routine use No. 1 permits disclosure to the Postal Service contractor who is providing bill payment and customer support services for EBP. Routine use No. 2 permits disclosure to a payee or financial institution to resolve payment-posting problems. Routine use No. 3 permits disclosure to an authorized credit bureau for the purpose of identity verification. Routine use No. 4 permits disclosure for law enforcement purposes only pursuant to a federal search warrant. Routine use No. 5 permits disclosure pursuant to a federal court order.

The new system is not expected to have an adverse effect on individual

privacy rights. The contractor that maintains information collected by this system is made subject to the Privacy Act in accordance with subsection (m) of the Act (which applies when the agency provides by contract for the operation of a system of records to accomplish an agency function) and is required to apply appropriate protections subject to audit and inspection by the Postal Inspection Service. Procedures are in place to verify identity of individuals, the accuracy of information maintained, and the security of information maintained and transmitted.

Customers using the EBP service must agree to the following terms and conditions:

- The Postal Service can deny enrollment to a customer if the customer's identity or other information cannot be verified.
- The Postal Service requires customers to protect their bill payment password and not to share it with others.
- The Postal Service requires customers to report any suspected compromise of the password quickly to ensure minimal financial loss.

To register, a customer must provide a unique user name and password. Confirmation of registration is currently sent by mail to ensure the customer's identity and the accuracy of information collected by the use of a one-time payment activation code assigned to the customer, which must be entered before a payment can be initiated. The code is entered only once. In the near future, identity confirmation will be conducted online.

Security controls have been applied to protect the information during transmission and physical maintenance. The system will be housed in a restricted area with access controlled by an installed security software package, the use of logon identifications and passwords, and operating system controls. Information is transmitted in a secure session established by Secure Socket Layer or equivalent technology. These technologies encrypt or scramble the transmitted information so it is virtually impossible for anyone other than the Postal Service and its provider or biller to read it.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written comments on this notice. A report of the following new system of records has been sent to Congress and to the Office of Management and Budget for their evaluation.

USPS 040.060

SYSTEM NAME:

Customer Programs-Customer Electronic Bill Presentment and Payment Records, USPS 040.060.

SYSTEM LOCATION:

Postal Service Headquarters and contractor site.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers who use the Postal Service's electronic bill presentment and payment (EBP) service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Registration information includes customer name, address, date of birth, driver's license number, home and work phone numbers, e-mail address, EBP service billing information (checking account number and bank routing number), EBP service user name/ID and password, consumer's billers registered with service, bill detail, and bill summaries. Customer social security numbers are collected but not retained by the Postal Service; they are used to confirm customer identity at time of registration.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401 and 404.

PURPOSE(S):

Information in this system is used to provide electronic bill presentment and payment services to Postal Service customers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements b, e, f, and j listed in the prefatory statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:

1. Information from this system may be disclosed to a service provider under contract with the Postal Service for the purpose of providing electronic bill presentment and payment service and customer service support services.
2. Information from this system may be disclosed to a payee or financial institution for purposes of resolving payment-posting questions or discrepancies and questions regarding status of electronic bill payments.
3. Information from this system may be disclosed to an authorized credit bureau for the purpose of verifying identity and for determining the risk limits to be applied to each subscriber.
4. Information from this system may be disclosed for law enforcement purposes to a government agency, either federal, state, local, or foreign, only pursuant to a federal warrant duly issued under Rule 41 of the Federal Rules of Criminal Procedure. See Administrative Support Manual (ASM) 274.6 for procedures relating to search warrants.
5. Information from this system may be disclosed pursuant to the order of a federal court of competent jurisdiction.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated database, computer storage media, and microfiche.

RETRIEVABILITY:

The service provider retrieves information by customer identification number. The Postal Service retrieves information by customer name and address.

SAFEGUARDS:

Computer storage tapes and disks are maintained in locked filing cabinets in controlled-access areas or under general scrutiny of the service provider program personnel. Computers containing information are located in controlled-access areas with personnel access controlled by a cipher lock system, card key system, or other physical access control method, as appropriate. Authorized persons must be identified by a badge. Computer systems are protected with an installed security software package, computer logon identifications and operating system controls including access controls, terminal and user identifications, and file management. Online data transmission is protected by encryption. Contractors must provide similar protection subject to an operational security compliance review by the Postal Inspection Service.

RETENTION AND DISPOSAL:

1. For active subscribers, the personal enrollment data (*e.g.*, name and address) is retained as long as the subscriber's account is active, and is archived for seven (7) years after the subscriber's account ceases to be active. For non-active subscribers, the personal enrollment data collected at the time of enrollment is archived for seven (7) years after the service is canceled.
2. Payment History includes paid, canceled, and failed payments. Account Banking data includes Demand Deposit Account (DDA) number and routing number. This information is maintained for six (6) months online and is then archived to magnetic tape for seven (7) years from the date of processing.

3. Billing summary data includes bill due date, bill amount, biller information, biller representation of account number, and the various status indicators (scheduled, in progress, etc.). This information is stored on magnetic tape for two (2) years from the date of processing.

4. At the end of each record retention period, the data on tape is destroyed by over-recording.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Vice President, Corporate and Business Development, United States Postal Service, 475 L'Enfant Plaza SW., Washington DC 20260–5130.

NOTIFICATION PROCEDURE:

Individuals wanting to know whether information about them is maintained in this system of records must address inquiries in writing to the system manager(s). Inquiries must contain name and address or other identifying information.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedures and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Information is furnished by record subjects and billers.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–32959 Filed 12–26–00; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Privacy Act of 1974, System of Records

AGENCY: Postal Service.

ACTION: Notice of new system of records.

SUMMARY: This document publishes notice of a new Privacy Act system of records, USPS 050.080, Finance Records-Suspicious Transaction Reports. The new system contains personal information about postal customers who purchase or receive money orders, wire transfers, or stored value cards in a manner considered to be suspicious according to the provisions of the Bank Secrecy Act, 31 U.S.C. 5311 *et seq.*

DATES: Any interested party may submit written comments on the new system of records. This system will become effective without further notice February 5, 2001 unless comments received on or before this date result in a contrary determination.

ADDRESSES: Written comments on this notice should be mailed or delivered to Finance Administration/FOIA, United States Postal Service, 475 L'Enfant Plaza SW, RM 8141, Washington, DC 20260–5202. Copies of all written comments will be available at the above address for public inspection and photocopying between 8 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Henry Gibson (202) 268–4203.

SUPPLEMENTARY INFORMATION: The Postal Service will collect and maintain information about some of its customers to meet one of the requirements of the Federal Bank Secrecy Act. That law is designed to detect and deter money laundering. The intent of the law is to require banks and money services businesses to obtain, maintain, and/or report to the Department of Treasury certain identifying information about individuals who purchase financial instruments in a manner that raises a good faith suspicion of violation of laws and regulations dealing with money laundering pursuant to the provisions of the Bank Secrecy Act. The Postal Service is named as an entity that must comply with that law (31 U.S.C. 5312(a)(2)(V)). The Postal Service will maintain information about a purchaser of money orders, wire transfers, or stored value cards if a Postal Service employee knows, or has a good faith reason to believe, that the purchaser is involved in activity that might be in violation of law or regulation. The Postal Service is establishing this group of records as a system of records subject to the Privacy Act.

Computer and printed records are maintained in a secured computer complex, with physical, administrative, and software controls. Access to areas within the complex where these records are maintained is restricted with card keys. Access within the area is further restricted to authorized personnel with an official need to know.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this notice. A report of the following proposed system has been sent to Congress and to the Office of Management and Budget for their evaluation.

USPS 050.080

SYSTEM NAME:

Finance Records-Suspicious Transaction Reports, 050.080

SYSTEM LOCATION:

Finance, Headquarters, and St. Louis BSA Support Group, St. Louis, Missouri.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Postal Service customers who purchase money orders, wire transfers, or stored value cards in a suspicious manner under the provisions of the Bank Secrecy Act, 31 U.S.C. 5311, *et seq.*

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, Social Security number, alien registration number, tax identification number, passport number, date of birth, photo identification number and type (*e.g.*, driver's license, passport, military ID), bank account number, and amount of transaction are collected on PS Form 8105–B. Regulations under the Bank Secrecy Act require that customer's identifying information, including the customer's Social Security number, be collected.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 5318(g)(1).

PURPOSE(S):

Under the provisions of the Bank Secrecy Act, the system will be used to obtain and maintain identifying information on Postal Service customers who purchase money orders, wire transfers, or stored value cards in a manner raising a good faith suspicion of money laundering and to comply with the reporting requirements of the Bank Secrecy Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

General routine use statements a, b, c, d, e, f, g, h, and j listed in the prefatory statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses follow:

1. Information may be disclosed to the U.S. Department of Treasury, the U.S. Justice Department, and federal law enforcement agencies pursuant to the provisions of the Federal Bank Secrecy Act, as codified in section 5318 of Title 31 of the U.S. Code.

2. Information from this system may be disclosed to a foreign entity under agreement with the Postal Service to distribute money orders and transfer funds.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM STORAGE:

Paper and computer storage media.

RETRIEVABILITY:

By name and other unique identifier.

SAFEGUARDS:

Printed records and computers containing information within this system of records are maintained in a building with controlled access. To gain access to the building and access to controlled areas within the building, individuals must have authorized badges and/or card keys. Computer systems are protected with an installed security software package, the use of computer log-on IDs, and operating system controls.

RETENTION AND DISPOSAL:

PS Forms 8105–B will be destroyed either by shredding, burning, or other acceptable method of destruction five (5) years from the end of the accounting period in which they were created. Related automated information will be retained for the same period and purged from the system quarterly after the date of creation.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Financial Officer, Finance, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–5000.

NOTIFICATION PROCEDURE:

While the Privacy Act provides for the release of certain information, the portion of the Bank Secrecy Act dealing with suspicious activity states a financial institution (in this case the Postal Service) may not notify any person involved in the suspicious transaction that the transaction has been reported (31 U.S.C. 5318(g)(2)). Therefore, it would be contrary to the statutory mandates concerning collection of this information to provide notification thereof. It is the Postal Service's understanding that the "non-notification" clause in the Bank Secrecy Act supercedes the provision for the release of information in the Privacy Act. Therefore, this system has been exempted from the notification, access, and amendment requirements of the Privacy Act by regulation set out as 39 CFR 266.9.

RECORD ACCESS PROCEDURES:

See Notification Procedure above.

CONTESTING RECORD PROCEDURES:

See Notification Procedures above.

RECORD SOURCE CATEGORIES:

Information resident in this system of records is provided through transaction analysis and by postal employees in accordance with the provisions of the Bank Secrecy Act.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Postal Service has established regulations at 39 CFR 266.9 that exempt information contained in this system of records from various provisions of the Privacy Act in order to conform to the prohibition in the Bank Secrecy Act, 31 U.S.C. 5318(g)(2), against notification of the individual that a suspicious transaction has been reported.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–32961 Filed 12–26–00; 8:45 am]

BILLING CODE 7710–12–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: Industry Guides, SEC File No. 270–69, OMB Control No. 3235–0069; Notice of Exempt Roll-Up Preliminary Communication, SEC File No. 270–396, OMB Control No. 3235–0452.

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.

Industry Guides are used by registrants in certain specified industries as disclosure guidelines in preparing Securities Act of 1933 ("Securities Act") and Securities Exchange Act of 1934 ("Exchange Act") registration statements as well as other Exchange Act filings. The Commission estimates for administrative purposes only, that the total annual burden with respect to the Industry Guides is one hour. The Industry Guides do not directly impose any disclosure burden.

A Notice of Exempt Preliminary Roll-Up Communication ("Notice") is required to be filed by a person making such a communication by Exchange Act Rules 14a–2(b)(4) and 14a–6(a). The Notice provides public information regarding the person's ownership interest and any potential conflicts of interest. The Notice takes approximately .25 hours per response and is filed by 4 respondents for a total of 1 annual burden hour.

Written 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 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 Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: December 13, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–32943 Filed 12–26–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43736; File No. SR–Amex–99–16]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the American Stock Exchange LLC Relating to Amex Rule 108, Priority and Parity at Openings

December 18, 2000.

On April 28, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] relating to Amex Rule 108, Priority and Parity at Openings. On July 13, 1999, the Amex filed an amendment to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change.[3] Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on February 28, 2000.[4] The Commission received one comment letter regarding the proposal.[5] This order approves the proposed rule change, as amended.

I. Introduction and Background

The proposed rule change would amend Amex Rule 108, Priority and Parity at Openings, by adding Commentary .02 to modify procedures applicable to proprietary orders sent by market makers in other Intermarket Trading System ("ITS") participant markets to the Amex by means of the Common Message Switch ("CMS") and Amex Order File ("AOF") or through a floor broker before an ITS pre-opening notification or indication of an anticipated opening price range is issued by the Exchange specialist.

Presently, the Amex pre-opening procedures allow market makers on other ITS participant markets to enter orders into CMS and AOF or through a floor broker for their own account before an indication or ITS pre-opening notification is issued, and then to receive an execution in full at the opening price (or the re-opening price following a halt or suspension in trading).

II. Description of the Proposal

Proposed Commentary .02 to Amex Rule 108, would set forth procedures that apply to an order for the account of market makers on another ITS participating market center entered on the Exchange before the Amex specialist issues an ITS pre-opening notification or an indication through the Consolidated Tape. Paragraph (a) would provide that the Amex specialist would not be required to execute such orders if they would add to the imbalance at the opening or re-opening, but the specialist could execute all or part of such orders in his or her discretion, and any portion not executed at the opening or re-opening would be canceled. Paragraph (b) would provide that, if such orders would offset the imbalance, the Amex specialist may take or supply as principal 50 percent of the imbalance at the opening price, rounded up or down to avoid allocation of odd-lots. Where orders have been received from more than one market maker, the Amex specialist would allocate the remaining imbalance among them in proportion to the amount that each obligated itself to take or supply. For purposes of paragraph (b), multiple market makers, in the same security in the same market would be deemed to be a single market maker. Paragraph (c) would note that Paragraphs (a) and (b) of Commentary .02 would only apply if the Amex specialist issues an ITS pre-opening notification or indication through the Consolidated Tape. Paragraph (d) would provide that proprietary orders from market makers in other ITS participant markets shall be marked and identified as such.

III. Summary of Comments

The Commission received one comment letter on the proposed rule change.[6] In general, the Commenter stated that the proposed rule change would place an unnecessary burden on competition, hinder, rather than facilitate, transactions in securities, create an obstacle to price discovery at the opening, and serve to restrict rather than to promote a free and open market.[7]

Specifically, the Commenter stated that under the Amex's current practice, the Amex specialist is able to allow the full supply and demand for the security to determine the opening price because all trading interests are aggregated at the opening, including proprietary orders of other market makers. However, the Commenter opined that allowing the Amex specialist to reject orders of regional specialists is contrary to the concept of a national market system because it singles out a particular form of trading interest for exclusion from the opening.[8]

In addition, the Commenter stated that the proposal, if approved, would allow Amex specialists, upon issuance of a pre-opening indication, to exclude proprietary trading interest if it increases an imbalance, even if such interest was entered before an indication was published. As a result, the proposal would hinder price discovery, and by discriminating against regional exchange specialists, might further fragment the National Market System ("NMS").[9]

The Commenter stated that the proposal would impose an unnecessary burden on regional specialists, who, believing that they have taken appropriate steps to minimize risk exposure in given issues prior to the opening by entering orders on the Amex for execution at the opening, would find it necessary to monitor the Amex market for the possibility of a pre-opening indication. The specialist would then have to cancel orders out of the Amex system and re-enter trading interest through ITS to ensure participation in the opening. The Commenter further opined creating additional differences between the pre-opening procedures on the Amex and the NYSE would be overly burdensome.[10]

The Commenter recommended that the Commission not approve the Amex's proposed rule change, in order to avoid unfair discrimination, obstacles to price discovery and transactions of regional specialists, and further fragmentation of the NMS.[11]

The Amex responded by stating that (1) the proposal would benefit investors; and (2) the proposed procedures have already been reviewed and approved by the Commission in the context of interest of market makers on other ITS participant markets that is sent to the Amex after an indication or pre-opening notification.[12]

In response to the Commenter's issues regarding price discovery, discrimination, and unnecessary burden on competition, the Amex stated that the proposed procedures are comparable to those already in effect at the Amex and other markets for pre-opening interest sent by ITS Participants after a pre-opening notification or indication has been sent by the Exchange.[13] The Amex stated that applying the proposed procedures to the orders of the market makers before, rather than after, an indication or pre-opening notification does not place any burden on transactions in securities that the Commission has not already reviewed and approved.[14] The Amex believes it is therefore reasonable and consistent with the Act to conform the procedures for handling orders that are received before a notification or indication to the procedures that would apply to interest

[3] *See* Letter from William Floyd-Jones, Assistant General Counsel, Amex, to Michael Walinskas, Associate Director, Division of Market Regulation ("Division"), Commission (July 8, 1999) ("Amendment No. 1"). Amendment No 1 replaces and supercedes the original filing.

[4] Securities Exchange Act Release No. 42441 (February 18, 2000), 65 FR 10571 (February 28, 2000) (SR–Amex–99–16).

[5] *See* Letter from Peter G. Armstrong, Vice President, San Francisco Equity Operations, Pacific Exchange, Inc. ("PCX") to Jonathan G. Katz, Secretary, Commission, (April 7, 2000).

[6] *See* note 5, *supra*.

[7] *See* note 5, *supra*, p. 1.

[8] *See* note 5, *supra*, p. 2.

[9] *See* note 5, *supra*, p. 2.

[10] *See* note 5, *supra*, p. 2.

[11] *See* note 5, *supra*, p. 3.

[11] *See* Letter from Bill Floyd-Jones, Assistant General Counsel, Amex, to Katherine England, Assistant Director, Division, Commission (July 28, 2000).

[13] *Id.* at p.1.

[14] *See* ITS Plan, Exhibit A, Paragraph (b)(i)(B).

received after a pre-opening notification or indication.[15]

In response to the issue of further fragmentation of the NMS, the Amex provided an illustration in which a riskless principal transaction by a market maker on other ITS participant markets may result in a double printing of trades and a misleading appearance of activity in a stock.[16] The Amex states that the practice, along with the generation of tape revenue for the regional exchange, which is used to subsidize cash payments for order flow arrangements, may lead to further fragmentation in the market. However, the Amex opined the proposal would reduce fragmentation and enhance price discovery at openings and re-openings because the proposal is designed to help provide moire accurate pricing at the opening.[17]

Finally, the Amex noted that the proposal made no changes in the procedures for handling specific customer orders or net imbalances or agency interest.[18] If a specialist on a regional market is unable to execute the agency orders, he or she may send the orders via an ITS commitment to the Amex at no charge to the regional specialist and those orders will be treated as any other customer orders at the Amex. The Amex believes that the proposal will neither impede price discovery nor increase market fragmentation so long as the regional specialist continues to send orders that the regional specialist is either unable or unwilling to execute, to the Exchange via ITS.[19] The Amex also noted that the proposal would only affect the occasional regional specialist proprietary order.[20]

IV. Discussion

After careful review, the Commission finds that the proposal is consistent with the requirements of Section 6(b) of the Act in general,[21] and furthers the objectives of Section 6(b)(5) of the Act,[22] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with respect to facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.[23]

The Commission also finds that the changes are consistent with Section 11A(a)(1)(D) of the Act,[24] in that the linking of markets for qualified securities though communication and data processing facilities should help to foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to the best execution of such orders.

In determining that the proposed procedures that apply to orders entered on the Exchange before the Amex specialist issues an ITS pre-opening notification or indication through the Consolidated Tape are reasonable and consistent with Section 6(b)(5)[25] and 11A(a)(1)(D)[26] of the Act, the Commission has considered carefully the Commenter's concerns that the proposed procedure place an unnecessary burden on competition, hinder transactions in securities, create obstacles to price discovery and restrict rather than promote a free and open market. The Commission is not persuaded by these arguments. The proposed procedures should reduce the imbalances of buy or sell orders at openings or re-openings, and decrease the market risk on the Amex specialist, thus helping to facilitate orderly openings and re-openings. In addition, the orders of market makers in other ITS participant markets entered before an indication or pre-opening notification has been sent will be treated in a manner comparable to the manner such orders would be handled pursuant to the ITS Plan if they were entered after an indication or pre-opening notification.

The Commission also has considered carefully the Commenter's concern of further market fragmentation because of discrimination against regional exchange specialists. The Commission believes that the proposed procedures will help to contribute to enhance execution of orders and foster cooperation and coordination with other ITS participant markets because the proposal is designed to promote accurate pricing at the opening; orders of market makers in other ITS participant markets would be executed in accordance with the current procedures if the Amex specialist does not issue a notice or indication before the opening or re-opening. The proposal does not make any changes to the Amex's current procedures of handling specific customer orders or net imbalances of agency interest.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[27] that the proposal, as amended (SR–Amex–99–16), be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–32892 Filed 12–26–00; 8:45 am]

BILLING CODE 8010–01–M

[15] *See* note 12, *supra*, p. 1.

[16] *See* note 12, *supra*, pp. 2–3.

[17] *See* note 12, *supra*, p. 2.

[18] *See* note 12, *supra*, p. 2. These are two of the three types of orders that PCX sends to the Amex.

[19] *See* note 12, *supra*, p. 2.

[20] *See* note 12, *supra*, p. 2.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78k–1(a)(1)(D).

[25] 15 U.S.C. 78f(b)(5).

[26] 15 U.S.C. 78k–1(a)(1)(D).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43737; File No. SR–Amex–00–42]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange LLC Relating to the Auto-Ex By-Pass Provisions

December 18, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 9, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Amex. 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 American Stock Exchange LLC proposes to allow options orders to by-pass Auto-Ex when the best bid or offer is represented by either a registered trader or a floor broker.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The automatic execution system at the Exchange (known as "Auto-Ex") provides the options investor with an important and useful tool in today's trading environment. since the system's implementation in 1985—for a limited number of option classes and for small orders of 10 contracts or less—the Commission has approved the system's expansion to all option classes traded and recently has approved an increase of the maximum permissible order size to 75 contracts.[3] Auto-Ex provides the investor with an efficient means of getting a rapid, guaranteed execution of a market or marketable limit order. In the often fast-moving and volatile environment of options trading, a guaranteed and rapid execution clearly has value to an investor. In fact, an assured execution in a rapidly changing market and the avoidance of the potential downside risk of missing the market has benefited investors during the last 15 years. In addition, automatic executions have reduced the costs of trades generally and have enabled traders, specialists and the Exchange itself to better manage the tremendous volume of transactions that our markets now regularly experience.

To operate efficiently, Auto-Ex provides that all customer market and marketable limit orders within the appropriate size parameters be executed at the prevailing best bid or offer with either the specialist or a registered options trader as the contra-party to the transaction. The specialist in each option class must sign on and remain on Auto-Ex every trading day; registered trades, on the other hand, are not obligated either to sign on or remain on Auto-Ex in the option classes they trade. When registered traders have signed on to Auto-Ex in a particular option class, however, orders automatically executed through the system are distributed to the specialist and registered traders on a random rotating basis. Thus, a registered trader who improves the market is not assured of being the contra-party on an Auto-Ex execution at that better bid or offer because it may not be that registered traders' turn to receive the Auto-Ex transaction.

The Exchange is proposing to expand its auto-Ex by-pass feature to encourage further registered trades to improve the quotation. Currently, the by-pass feature provides that whenever the bid or offer in a specific series represents a customer limit order on the specialists' book, or a better bid or offer is being disseminated by another options exchange, market and marketable limit orders eligible for an Auto-Ex execution by-pass the system and are routed instead to the specialist for handling. Expanding this by-pass feature to include situations where a registered options trader improves the quotation would ensure that registered options traders are the conta-party to any market or marketable limit order that, without the by-pass feature, would have been executed by the Auto-Ex system. Registered traders will now be assured that when they improve the quotation in a given option series they can be the conta-party to transactions at the improved bid or offer for Auto-Ex eligible market and marketable limit orders in addition to the larger size non-Auto-Ex eligible orders for which they currently compete. If the registered trader chooses to use this feature, the size of their bid or offer will have to be at least the guaranteed Auto-Ex size (*i.e.*, currently 10 to 75 contracts, depending on the options class).

The Exchange also proposes that this feature be expanded to floor brokers representing customer orders in the trading crowd. When Auto-Ex was first developed in 1985, floor brokers and their customers objected to transactions occurring on Auto-Ex while orders they represented in the trading crowd went unexecuted. Floor brokers withdrew these objections when they recognized the benefits of Auto-Ex executions of small market and marketable limit orders. However, if registered traders can cause orders to by-pass Auto-Ex, floor brokers may believe that their customers' interests are not being served and, therefore, brokers also need the capability of having orders by-pass Auto-Ex. Thus, floor brokers can improve either the bid or the offer and be assured that their customers will be the contra-party to any market or marketable limit orders that would otherwise have been automatically executed through Auto-Ex. Floor brokers choosing to use this feature will have to bid or offer for at least the guaranteed Auto-Ex size (*i.e.*, currently 10 to 75 contracts, depending on the options class).

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b) of the Act[4] and Section 6(b)(5),[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements

[3] The maximum Auto-Ex size for eligible orders was recently increased from 50 to 75 contracts. *See* Securities Exchange Act Release No. 43516 (November 3, 2000), 65 FR 69079.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–00–42 and should be submitted by January 17, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–32894 Filed 12–26–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43738; File No. SR–ISE–00–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange LLC, Relating to Minimum Activity Fees

December 18, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b–4, thereunder,[2] notice is hereby given that on December 7, 2000, the International Securities Exchange LLC ("Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing changes to its fees regarding inactive memberships. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE 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

Currently not all of the Exchange's Primary Market Maker ("PMM") memberships have begun trading in their assigned group of options ("bins"). The Exchange is proposing that PMMs will be subject to a $100,000 monthly fee if the PMM has not yet opened the bin for trading. Once a bin is opened for trading, there will be a $50,000 per month minimum fee per bin. That is, if transaction charges with respect to trading in the bid do not total $50,000 per month, the PMM will be charged a fee equal to $50,000 minus the actual transaction charges.

These fees are structured to provide the Exchange with revenue that will, in part, help recover revenue lost due to the lack of trading. In particular, these fees will help recoup lost transaction and access charges. The Exchange will periodically reevaluate these fees to maintain the relationship between the amount of the fees and the lost revenue being recouped. These fees will become effective on January 1, 2001.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirements under Sections 6(b)(4) and 6(b)(5) of the Act[3] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest, as well as provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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[4] and Rule 19b–4(f)(6)[5] thereunder because the rule change: (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. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

A proposed rule change filed under Rule 19b–4(f)(6)[6] normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[7] permits the Commission to designate such shorter time if such action is consistent with the protection of investors and the public interest. The ISE has requested that the Commission accelerate the implementation of the proposed rule change so that it may take effect on January 1, 2001. The ISE represented that all of the broker-dealers that currently anticipate being subject to the proposed fee are represented on ISE's board of directors, voted to adopt the proposed fee, and approved its submission to the Commission.

On this basis, the Commission believes that it is consistent with the

[6] 17 CFR.200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b)(4)–(5).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] 17 CFR 240.19b–4(f)(6).

[7] 17 CFR 240.19b–4(f)(6)(iii).

protection of investors and the public interest and does not impose any significant burden on competition to allow the proposed rule change to become operative as of the date of this Order and be implemented on January 1, 2001. 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.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–ISE–00–26 and should be submitted by January 17, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–32893 Filed 12–26–00; 8:45 am]

BILLING CODE 8010–01–M

[8] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proopsed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43749; File No. SR–NASD–00–59]

Self Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. to Permit the Inclusion of Certain Unit Investment Trusts in Nasdaq's Mutual Fund Quotation Service

December 20, 2000.

I. Introduction

On October 20, 2000, the National Association of Securities Dealers, Inc. ("NASD") through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to include certain unit investment trusts ("UITs") in Nasdaq's Mutual Fund Quotation Service ("MFQS"). Notice of the proposed rule change was published for comment in the **Federal Register** on December 1, 2000.[3] No comments were received on the proposal. On December 13, 2000, Nasdaq filed Amendment No. 1 to the proposal.[4] This order approves the proposed rule change, as amended, on an accelerated basis.

II. Description of the Proposal

Nasdaq proposes to amend NASD Rule 6800 to permit the inclusion of certain UITs in the MFQS.[5] Changes made by Amendment No. 1 are indicated as follows. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

6800. Mutual Fund Quotation Service

(a) Description.

The Mutual Fund Quotation Service collects and disseminates through The Nasdaq Stock Market prices for [both] mutual funds, *closed-end funds,* [and] money market funds, *and unit investment trusts.*

(b) Eligibility Requirements.

To be eligible for participation in the Mutual Fund Quotation Service, a fund shall:

(1) be registered with the Commission as an open-end ("open-end fund") or a closed-end ("closed-end fund") investment company *or a unit investment trust* pursuant to the Investment Company Act of 1940,

(2) execute the agreement specified by the Association relating to the fund's obligations under the Program,

(3) pay, and continue to pay, the fees as set forth in Rule 7090, and

(4) submit quotations through an automatic quotation system operated by the Association.

(c) News Media Lists.

(1)(A) An eligible open-end fund shall be authorized for inclusion in the News Media List released by the Association if it has at least 1,000 shareholders or $25 million in net assets.

(B) An eligible closed-end fund *or unit investment trust* shall be authorized for inclusion in the News Media List released by the Association if it has at least $60 million in net assets.

(C) Compliance with subparagraphs (1)(A) and (B) shall be certified by the fund to the Association at the time of initial application for inclusion in the List.

(2)(A) An authorized open-end fund shall remain included in the New Media List if it has [either] *at least* 750 shareholders or $15 million in net assets.

(B) An authorized closed-end fund *or unit investment trust* shall remain included in the News media List if it has *at least* $30 million in net assets.

(C) Compliance with subparagraphs (2)(A) and (B) shall be certified to the Association upon written request by the Association.

(d) Supplemental List.

An eligible open-end *fund,* [or] closed-end fund *or unit investment trust* shall be authorized for inclusion in the Supplemental List released to vendors of Nasdaq Level 1 Service if it meets one of the criteria set out in subparagraph (1), subparagraph (2), or subparagraph (3) below:

(1) the fund *or unit investment trust* has net assets of $10 million or more, or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* securities Exchange Act Release No. 43613 (November 22, 2000), 65 FR 75328 (December 1, 2000).

[4] *See* Letter from Jeffrey S. Davis, Office of General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (December 13, 2000). Amendment No. 1 amended the language of proposed NASD Rule 6800 to reflect that UITs have "sponsors" rather than "investment advisors" and that the assets of such trusts are not "managed" as that term is defined in the Investment Company Act of 1940. This is a technical amendment and is not subject to notice and comment.

[5] Section 4(2) of the Investment Company Act of 1940 defines a Unit Investment Trust as "an investment company which (A) is organized under a trust indenture, contract of custodianship or agency, or similar instrument, (B) does not have a board of directors, and (C) issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities; but does not include a voting trust." 15 U.S.C. 80a–4(2).

(2) the fund *or unit investment trust* has had two full years of operation, or

(*3*) the fund's investment adviser *or unit investment trust's sponsor:*

(A) is the investment adviser *or sponsor* of at least one other fund *or unit investment trust* that is listed on the Mutual Fund Quotation Service and that has net assets of $10 million or more; and

(B) [has at least $15 million in total assets of open-end and closed-end funds under management] *manages or sponsors open-end funds, closed-end funds, or unit investment trusts that have aggregate assets of at least $15 million.*

* * * * *

The MFQS was created to collect and to disseminate data pertaining to the value of open-end and closed-end funds. Currently, the MFQS disseminates the valuation date for over 11,000 funds. The Service facilitates this process by permitting funds included in the Service (or pricing agents designated by such funds) to use browser-based technology to transmit directly to Nasdaq a multitude of pricing information, including information about a fund's net asset value, offer price, and closing market price.

Funds must meet minimum eligibility criteria in order to be included in the MFQS.[6] The MFQS has two "lists" in which a fund may be included—the News Media List and the Supplemental List—and each list has its own initial inclusion requirements.[7] In addition, there are maintenance/continued inclusion requirements for the News Media list only. If a fund qualifies for the News Media List, pricing information about the fund is eligible for inclusion in the fund tables of newspapers and is also eligible for dissemination over Nasdaq's Level 1 Service, which is distributed by market data vendors. If a fund qualifies for the Supplemental List, the pricing information about that fund generally is not included in newspaper fund tables, but is disseminated over Nasdaq's Level 1 Service. Therefore, the Supplemental List provides significant visibility for funds that do not otherwise qualify for inclusion in the News Media List. Each fund incurs an annual fee for inclusion in the Service.[8]

MFQS provides valuable pricing information for a large portion of funds for which there is significant investor interest, but it currently covers no UITs. According to data compiled by the Investment Company Institute, as of the end of 1999, there were a total of 10,418 trusts with a market value of $94.60 billion, including 8,924 tax-free bond trusts, with a market value of $25.56 billion; 409 taxable bond trusts, with a market value of $4.28 billion; and 1,085 equity trusts, with a market value of $64.76 billion.

Due to the similarity in pricing characteristics, Nasdaq proposes to apply to UITs the same MFQS listing standards that will apply to closed-end mutual funds. To qualify for initial inclusion in the News Media Lists, a closed-end fund must have at least $60 million in net assets, and to remain in the News Media List, a closed-end fund would have to maintain at least $30 million in net assets. These listing standards are designed to identify securities in which there is significant investor interest. Likewise, Nasdaq would apply to UITs the same criteria for inclusion in the Supplemental List as it applies to open and closed-end funds. An open-end or closed-end fund qualifies for inclusion in the Supplemental List if the fund has at least $10 million in net assets, or the fund has had two full years of operation or if the investment advisor to the fund has at least one other fund listed on MFQS that has $10 million in assets. In addition, the investment advisor must have under management at least $15 million from open-end, closed-end, or money-market funds. Managed assets from other sources—such as pension funds—would not be included for purposes of determining whether the investment firm meets the requirement that it manage at least $15 million in fund-related assets. Nasdaq proposes to apply the same three alternative criteria to UITs, requiring that they have $10 million in assets, be in operation for two full years, or have a sponsor with sufficient fund- or UIT-related assets.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change as Amended

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,[9] and in particular, the requirements of Section 15A(b)(6)[10] of the Act, because it is designed to foster cooperation and coordination with persons engaged in processing information with respect to securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal, as amended, will protect investors and the public interest by promoting better processing of fund pricing information. Specifically, the Commission notes that in Section 11A(a)(1)(C),[11] Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations and transactions in securities. The Commission believes that the proposed rule change will help to protect investors and the public interest by promoting better processing of price information in UITs. Accordingly, the Commission believes that the new listing criteria will provide greater transparency to the markets by providing greater pricing information for a broader base of investments for which there is significant investor interest. Nasdaq estimates that nearly all of the equity-based UITs that exist today would be eligible for inclusion in the MFQS under the proposed new standards. The Commission also believes the proposed listing standards serve as a means for the marketplace to screen issuers and to provide listed status only to *bona fide* investment companies with sufficient investor base and trading interest to maintain fair and orderly markets.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that Nasdaq hopes to begin including UITs in the MFQS beginning on January 1, 2001 to enable investors to more easily monitor the performance of covered securities on a year-to-date basis, which is consistent with common practice. Accelerated approval of the proposed rule change, as amended, would therefore provided this improvement in service to investors more quickly. Further, proposed Amendment No. 1 provides clarity to the rule. It amended the language of proposed NASD Rule 6800 to reflect that UITs have "sponsors" rather than "investment advisors" and that the assets of such trusts are not "managed" as that term is defined in the Investment Company Act of 1940.[12] The Commission believes, therefore, that

[6] *See* NASD Rule 6800.

[7] *See id.*

[8] *See* NASD Rule 7090.

[9] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78*o*–3(b)(6).

[11] 15 U.S.C. 78k–1(a)(1)(C)

[12] 15 U.S.C. 80b–2(a)(11).

granting accelerated approval of the proposed rule change, as amended, is appropriate and consistent with Section 15A(b)(6) [13] of the Act.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal, as amended, is consistent with the Act and the rules and regulations thereunder.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change, SR–NASD–00–59, as amended, be and hereby is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–32944 Filed 12–26–00; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice Number 3500]

Overseas Schools Advisory Council; Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Executive Committee Meeting on Tuesday, January 30, 2001, at 9:30 a.m. in Conference Room 1105, Department of State Building, 2201 C Street, NW., Washington, DC. The meeting is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas, which are assisted by the Department of State and which are attended by dependents of U.S. Government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools. The agenda includes a review of the recent activities of American-sponsored overseas schools and the overseas schools regional associations, a presentation on the status of education in the United States and its impact on American-sponsored overseas schools, a review of the project selection process for the annual Program of Educational Assistance, and selection of projects for the 2001 program.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. Access to the State Department is controlled, and individual building passes are required for all attendees. Persons who plan to attend should so advise the office of Dr. Keith D. Miller, Department of State, Office of Overseas Schools, Room H328, SA–1, Washington, DC 20522–0132, telephone 202–261–8200, prior to January 20, 2001. Each visitor will be asked to provide a date of birth and Social Security number at the time of registration and attendance and must carry a valid photo ID to the meeting. All attendees must use the C Street entrance to the building.

Dated: December 11, 2000.

Keith D. Miller,

Executive Secretary, Overseas Schools Advisory Council, U.S. Department of State.

[FR Doc. 00–32990 Filed 12–26–00; 8:45 am]

BILLING CODE 4710–24–P

TENNESSEE VALLEY AUTHORITY

Environmental Assessment or Environmental Impact Statement on Proposal to Transfer 710 Acres at Site of the Previously Proposed Hartsville Nuclear Plant, Trousdale and Smith Counties, Tennessee

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of Intent.

SUMMARY: Members of the local communities in Trousdale and Smith Counties, Tennessee have requested TVA to transfer 710 acres (about 287 hectares) of land within the site of the formerly proposed Hartsville Nuclear Plant to a public/private entity for industrial and office development. TVA will prepare an environmental assessment (EA) or environmental impact statement (EIS) that assesses the impacts of the transfer. We are inviting comments concerning the scope of the issues and the alternatives that should be addressed in the EA/EIS.

TVA will begin by developing an EA for the proposed transfer. In the event that information gathered or analyses conducted in preparing this EA indicate that the proposal could have a significant impact on the environment, the agency will prepare an EIS. If TVA decides to prepare an EIS, the scoping process now underway for the EA will be used for the EIS and will not be repeated.

How and When to Comment: Send written comments to Peter K. Scheffler, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee, 37902–1499. Send comments by e-mail to pkscheffler@tva.gov. You may comment by telephone to TVA's automated voice mail system at 1–800–TVA–LAND (882–5263). Mailed comments should be postmarked no later than 30 days following publication of this notice in the **Federal Register** to ensure consideration. E-mailed and telephoned comments should be made no later than 30 days following publication to ensure consideration.

FOR FURTHER INFORMATION CONTACT: You can find information on TVA's web site at www.tva.gov/environment/reports. For basic project information you can also contact Michael A. Montgomery, Tennessee Valley Authority, P.O. Box 292409, Nashville, TN 37229–2409; 615/232–6053,; mamontgomery@tva.gov. For information on the environmental review, you can contact Charles L. McEntyre, Tennessee Valley Authority, 1101 Market Street, HB 2A, Chattanooga, TN 37402–2801; 423/751–4123; clmcentyre@tva.gov.

SUPPLEMENTARY INFORMATION:

Background

TVA acquired 1,940 acres (about 785 hectares) of land in Trousdale and Smith Counties, Tennessee, in the late 1960s and early 1970s as a site on which to construct a nuclear power plant. The site is located on the Cumberland River on the north shore of Old Hickory Reservoir at approximate river mile 285. The town of Hartsville is about 5 miles (8 kilometers) northwest of the site, and Nashville is about 40 miles (about 64 kilometers) southwest.

TVA prepared an EIS for the proposed nuclear plant on the proposed nuclear plant and made it available to the public on May 23, 1975. Following completion of the EIS, TVA began construction of the plant, but did not complete it. TVA has used some of the buildings on the site for storage and has leased other buildings for industrial activity.

In the years since the plant construction was discontinued, the pace of economic growth in the counties around the site has been slow, and high unemployment and low wages continue to be problems. Members of the local communities have seen the largely undeveloped site of the proposed nuclear plant as a suitable site for an industrial and office park which would help remedy the area's economic problems. On June 5, 2000, members of the local communities and elected representatives met with TVA to present the idea of transferring 710 acres (about 287 hectares) of the site to a public/

[13] 15 U.S.C. 78o–3(b)(6).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12)

private entity for the park. The requested property lies along the western edge of the nuclear plant site and straddles the Trousdale/Smith County line. At the request of the communities, TVA prepared a conceptual plan to evaluate the feasibility of the requested property as an industrial/office park from an engineering standpoint. A copy of the conceptual plan is shown on TVA's web site at www.tva.gov/environment/reports and can be obtained from Mr. Montgomery or Mr. McEntyre.

Proposed Issues To Be Addressed

The EA/EIS will describe and evaluate the impact of the proposed industrial/business park on the existing natural, cultural, and socieconomic resources and conditions in the project vicinity. Specific issues will include air quality, water quality, terrestrial and aquatic life, endangered and threatened species, wetlands, floodplains, historic and archaeological resources, (particularly historic properties listed or eligible for listing in the National Register of Historic Places), jobs, traffic, and existing use of the park site for hunting and business activity.

Alternatives

The EA/EIS will evaluate the impact of reasonable alternatives. The alternatives now being contemplated are the transfer of the 710 acres as requested by the communities, the transfer of individual tracts when requested for specific purposes, and the no-action alternative. TVA will take into account the potential impacts of the alternatives on the natural, cultural, and socioeconomic resources and conditions, together with engineering and economic considerations, to select a preferred alternative. The preliminary identification of reasonable alternatives and environmental issues in this notice is not meant to be exhaustive or final.

Scoping Process

Scoping, which is integral to the EA/EIS process, ensures that: (1) All pertinent issues are identified early and properly studied, (2) issues of little significance do not consume substantial time and effort, (3) the draft EA/EIS is thorough and balanced, and (4) delays caused by an inadequate EA/EIS are avoided. TVA's NEPA procedures require that the scoping process begin soon after a decision is made to prepare an EA or EIS, to provide an early and open process for determining the scope and for identifying the significant issues related to a proposed action.

The scoping process for this review includes specific opportunities for both public and interagency input. In addition to this notice requesting written comments, TVA is requesting comments by publishing a notice in area newspaper and is placing a notice on the TVA web site at www.tva.gov/environment/reports. Also, TVA is distributing information to and requesting comments from the owners and operators of businesses leasing buildings on the site, all persons who have requested permits for hunting on the site, the landowners from whom TVA bought of the site (who have a life estates for agricultural use of the tracts they sold), and other parties who have expressed interest in similar TVA activities in middle Tennessee. The public is being asked to submit comments on the scope of this EA/EIS no later than 30 days after publication of this notice or they receive information through one of the other means.

TVA is also requesting comments from federal, state, and regional agencies, and Indian tribes. The federal agencies identified at this time for inclusion in the interagency scoping are the U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service. State agencies include the Tennessee Department of Economic and Community Development, Tennessee Department of Environment and Conservation, Tennessee Wildlife Resources Agency, the Tennessee State Historic Preservation Officer, and the Tennessee Commission of Indian Affairs. Regional agencies include the Mid-Cumberland Council of Governments, Trousdale County, Smith County, and the towns of Hartsville and Carthage. Indian tribes include the Eastern Band and United Keetoowah Band of the Cherokee Indians, the Cherokee Nation of Oklahoma, the Muscogee (Creek) Nation of Oklahoma, the Absentee-Shawnee Tribe of Oklahoma, the Eastern Shawnee Tribe of Oklahoma, and the Poarch Band of Creek Indians. Other agencies, as appropriate and identified, will also be included.

TVA will develop and maintain a mailing list of agencies, organizations, and other interested parties who have requested to be included in the process. TVA will also maintain a public reference file at its Highland Ridge Tower offices, 535 Marriott Drive, Nashville, Tennessee, 37214, which will include copies of all written correspondence, documents, meeting notices, agendas and summaries, etc.

After consideration of the scoping comments, TVA will develop the sets of environmental issues and alternatives to be addressed in the EA/EIS. Once the analysis of the environmental consequences of each alternative is completed, TVA will issue a draft EA/EIS for public review and comment. TVA will issue public notices announcing the availability and requesting comments in area newspapers, post information on its web site at www.tva.gov/environment/reports, and provide a copy to those who request one in their comments on the scope. If an EIS is prepared, a Notice of Availability of the draft EIS will also be published in the **Federal Register**. TVA anticipates completing the draft EA/EIS in early 2001.

If an EA is prepared, a public information meeting on the draft EA/EIS will be held if adequate public interest in such a meeting has been demonstrated. If an EIS is prepared, a public information meeting on the draft will be held, with the schedule to be announced in the Notice of Availability, the newspapers, TVA's web site, and information accompanying the copies of the EIS sent to the public.

TVA is providing this notice pursuant to the Council on Environmental Quality's regulations (40 CFR 1500 to 1508), TVA's procedures implementing the National Environmental Policy Act, and Section 106 of the National Historic Preservation Act and its implementing regulations (36 CFR Part 800).

Dated: December 20, 2000.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment.

[FR Doc. 00–32934 Filed 12–26–00; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Transport Airplane and Engine Issues—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given of a new task assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: John McGraw, 1601 Lind Ave., Renton, Washington 98055–4056, 425–227–1171, john.mcgraw@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues.

The Task

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendations on the following task:

Task: Review the comments received the response to the Notice of Availability of proposed Advisory Circular (AC 39.XX), titled "Continued Airworthiness Assessments of Powerplant and Auxiliary Power Unit Installation on Transport Category Airplanes." Provide advice and recommendations on the task, recommend disposition of the comments that are inappropriate for incorporation in the proposed AC, and provide recommended revised language, in paragraph form, to address those comments that have merit and warrant incorporation in the proposed AC.

Schedule: The recommendations should be forwarded to the FAA by September 1, 2001.

ARAC Acceptance of Tasks

ARAC has accepted the task and has chosen to assign the tasks to the newly formed Continued Airworthiness Assessments Working Group, Transport Airplane and Engine Issues. The working group will serve as staff to ARAC and assist in the analysis of the assigned task. Working group recommendations must be reviewed and approved by ARAC. If ARAC accepts the working group's recommendations, it forwards them to the FAA as ARAC recommendations.

Working Group Activity

The Continued Airworthiness Assessments Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan, for consideration at the meeting of the ARAC Transport Airplane and Engine Issues held following publication of this notice.
2. Give a detailed conceptual presentation of the proposed recommendations.
3. Provide a status report at each meeting of the ARAC held to consider Transport Airplane and Engine Issues.

Participation in the working Group

The newly formed Continued Airworthiness Assessment Working Group will be composed of technical experts having an interest in the assigned task. A working group member need not be a representative of a member of the full committee.

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task and stating the expertise he or she would bring to the working group. All requests to participate must be received no later than January 20, 2001. The requests will be reviewed by the assistant chair, the assistant executive director, and the working group chair, and the individuals will be advised whether or not the request can be accommodated.

Individuals chosen for membership on the working group will be expected to represent their aviation community segment and participate actively in the working group (*e.g.*, attend all meetings, provide written comments when requested to do so, *etc.*). They also will be expected to devote the resources necessary to support the ability of the working group in meeting any assigned deadlines. Members are expected to keep their management chain and those they may represent advised of working group activities and decisions to ensure that the agreed technical solutions do not conflict with their sponsoring organization's position when the subject being negotiated is presented to ARAC for approval.

Once the working group has begun deliberations, members will not be added or substituted without the approval of the assistant chair, the assistant executive director, and the working group chair.

The Secretary of Transportation has determined that the formation and use of the ARAC is necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of the ARAC will be open to the public. Meetings of the Continued Airworthiness Assessments Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Dated: Issued in Washington, DC, on December 21, 2000.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 00–32955 Filed 12–21–00; 4:43 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

North Carolina Transportation Museum

[Docket Number FRA–2000–8418]

The North Carolina Transportation Museum of Spencer, North Carolina, has petitioned for a temporary waiver of compliance for one locomotive from the requirements of the Locomotive Inspection, 49 CFR 230.23(a), which requires staybolts having caps over their outer ends shall have the caps removed at least every two years and the bolts and sleeves examined for breakage. The museum states that they rotate the operation of steam locomotive number 604 on weekends during summer months in tourist service. Locomotive number 604 last had its staybolt caps removed on March 28, 1999, at which time the bolts and sleeves were inspected. If the waiver is approved the staybolt caps would be removed in 2002 when the locomotive would receive required work to bring it into compliance with the recently published, November 17, 1999, Inspection and Maintenance Standards for Steam Locomotives. The museum indicates that if the waiver is granted that the locomotive would operate an additional thirty five days over the next year.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before

the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2000–8418) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room Pl-401, Washington, DC. 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room Pl-401 (Plaza Level), 400 Seventh Street SW., Washington, DC. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, DC on December 20, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–32880 Filed 12–26–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–98–3577 (PDA–18 (R))]

Preemption Determination No. PD–18(R); Broward County, Florida's Requirements on the Transportation of Certain Hazardous Materials to or From Points in the County

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Administrative determination of preemption by RSPA's Associate Administrator for Hazardous Materials Safety.

Applicant: Association of Waste Hazardous Materials Transporters (AWHMT) and American Trucking Associations (ATA).

Local Laws Affected: Broward County, Florida Code of Ordinance No. 1999–53 §§ 27–352; 27–355(a)(1); 27–356(b)(4)d.1; 27–436; 27–439(b); 27–439(e)(2); 27–439(e)(3); 27–439(e)(4); 27–439(f)(1); 27–439(g)(1) and 27–439(g)(2).

Applicable Federal Requirements: Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.* and the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180.

Modes Affected: Highway and rail.

SUMMARY: Federal hazardous material transportation law preempts Broward County, Florida's requirements pertaining to certain hazardous material definitions and all requirements that rely on those definitions, written notification of a hazardous material release, shipping paper retention for certain hazardous materials transporters, licensing fees for hazardous waste transporters and monthly transportation activity reporting. Federal hazardous material transportation law does not preempt Broward County, Florida's requirements pertaining to oral notification of a hazardous material release, packaging standards for hazardous waste transport vehicles, shipping paper retention for hazardous waste transporters, periodic vehicle inspection and vehicle marking.

FOR FURTHER INFORMATION CONTACT: Donna L. O'Berry, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001 (Tel. No. 202–366–6136).

I. Background

On April 9, 1998, AWHMT applied for a determination that the Federal hazardous material transportation law preempts the following provisions of the Broward County Ordinance (Ordinance) 93–47, Chapter 27:

—Ordinance 27–352 containing the definition of "Hazardous Materials",
—Ordinance 27–355(a)(1) containing release reporting requirements,
—Ordinance 27–356(b)(4) d.1 and Ordinance 27–356(d)(4) a.1 containing shipping paper retention requirements,
—Ordinance 27–356(d)(4) a.2 containing standards for waste-hauling vehicles,
—Ordinance 27–356(d)(4) a.3 containing periodic vehicle inspection requirements,
—Ordinance 27–356(d)(4) a.4 containing requirements that waste-hauling vehicles be marked with an identification tag issued by the County,
—Ordinance 27–356(d)(4) a.6 containing training requirements for drivers and other appropriate personnel,
—Ordinance 27–356(d)(4) a.7 containing fee requirements for a license to transport discarded hazardous material within the County,
—Ordinance 27–356(d)(4) b.1 containing requirements to request a modification from the County prior to utilizing a vehicle for transporting a type of waste that is not specified on the current license, and
—Ordinance 27–356(d)(4) c.1 containing reporting requirements for monthly activity reports to be submitted to the County.

On August 6, 1998, RSPA published a public notice and invitation to comment on AWHMT's application (63 FR 42098). The notice set forth the text of AWHMT's application and asked that comments be filed with RSPA on or before September 21, 1998, and that rebuttal comments be filed on or before November 4, 1998. Comments were submitted by Nufarm, the Hazardous Materials Advisory Council (HMAC), Freehold Cartage, Inc., the Association of American Railroads (AAR), Mr. Tony Tweedale, and the Institute of Makers of Explosives (IME). AWHMT submitted rebuttal comments.

On October 26, 1998, the County requested that RSPA stay its review of AWHMT's application for six to eight months. The County requested a stay because it was proposing changes to the Ordinance that would possibly resolve the preemption issues raised in AWHMT's application. In a December 23, 1998 letter, AWHMT opposed the County's request for a stay and requested that RSPA proceed to issue a ruling in the matter. On March 15, 1999, RSPA granted the County's request for a stay. The stay was effective until July 1, 1999.

On September 28, 1999, the Broward County Commissioners adopted Ordinance No. 1999–53 (the revised Ordinance), which amended Chapter 27. In the previous version of the Ordinance, all of the regulations at issue in this proceeding were contained in Chapter 27, Article XII, "Hazardous Material." In the revised Ordinance, the County retained a modified version of Article XII and created a new article, Chapter 27, Article XVII, "Waste Transporters." Article XVII applies solely to waste transporters. Some of the regulations originally challenged in this proceeding were modified and moved to Article XVII, some were deleted from the revised Ordinance, and others remained where they were in the previous Ordinance.

On November 2, 1999, RSPA published a public notice reopening the comment period and invited interested parties to comment on the County's revised Ordinance (64 FR 59231). Comments were due by December 17, 1999, and rebuttal comments were due by January 31, 2000. RSPA limited additional comments to a discussion of

the revised Ordinance. Because it appeared that the County had substantially modified the Ordinance, RSPA requested that AWHMT supplement its application to reflect the revisions to the Ordinance. ATA, on behalf of AWHMT, submitted the revised application (herein referred to as ATA/AWHMT). In addition, IME and AAR submitted comments. On March 22, 2000, the County submitted its comments to the revised Ordinance. On May 5, 2000, ATA/AWHMT submitted rebuttal comments to the County's comments.

As a result of the County's changes in the revised Ordinance, ATA/AWHMT withdrew its challenge to four of the County's requirements. ATA/AWHMT continues to challenge the County's definitions of certain hazardous materials and the County's requirements pertaining to release reporting, standards for packaging, fees, monthly reporting, and vehicle inspection. In addition, AAR continues to challenge the County's shipping paper and vehicle marking requirements. This decision addresses only the challenges to the revised Ordinance.

II. Federal Preemption

The Hazardous Materials Transportation Act (HMTA) was enacted in 1975 to give the Department of Transportation greater authority "to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." Pub. L. 93–633 Section 102, 88 Stat. 2156, amended by Pub. L. 103–272 and codified as revised in 49 U.S.C. 5101. The HMTA "replace[d] a patchwork of state and federal laws and regulations * * * with a scheme of uniform, national regulations." *Southern Pac. Transp. Co.* v. *Public Serv. Comm'n*, 909 F.2d 352, 353 (9th Cir. 1980). On July 5, 1994, the HMTA was among the many Federal laws relating to transportation that were revised, codified and enacted "without substantive change" by Public Law 103–272, 108 Stat. 745. The Federal hazardous materials transportation law is now found at 49 U.S.C. 5101 *et seq.*

A statutory provision for Federal preemption was central to the HMTA. In 1974, the Senate Commerce Committee "endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). A Federal Court of Appeals affirmed that uniformity was the "linchpin" in the design of the HMTA, including the 1990 amendments that expanded the preemption provisions. *Colorado Pub. Util. Comm'n* v. *Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991).

The 1990 amendments to the HMTA codified the "dual compliance" and "obstacle" criteria that RSPA had applied in issuing inconsistency rulings before 1990.[1] The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.*, 435 U.S. 151 (1978). As now set forth in 49 U.S.C. 5125(a), these criteria provide that, in the absence of a waiver of preemption by DOT under 49 U.S.C. 5125(e) or unless it is authorized by another Federal law, "a requirement of a State, political subdivision of a State, or Indian tribe" is explicitly preempted if:

> (1) Complying with a requirement of the State, political subdivision or tribe and a requirement of [Federal hazardous materials transportation law] or a regulation prescribed under [Federal hazardous materials transportation law] is not possible; or
>
> (2) The requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to accomplishing and carrying out [Federal hazardous materials transportation law] or a regulation prescribed under [Federal hazardous materials transportation law].

In the 1990 amendments to the HMTA, Congress also added preemption provisions on the following subject areas:

(A) the designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing, of a package or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

49 U.S.C. 5125(b)(1). Unless it is authorized by another Federal law or a DOT waiver of preemption, a non-Federal requirement on any of these subjects is preempted when it is not "substantively the same" as a provision of this chapter or a regulation prescribed under this chapter. 49 U.S.C. 5125(b)(1). REPA has defined "substantively the same" to mean "conforms in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted." 49 CFR 107.202(d).

In addition, 49 U.S.C. 5125(g)(1) provides that a State, political subdivision, or Indian tribe may

> impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose relating to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response.

Under 49 U.S.C. 5125(d)(1), any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted. The Secretary of Transportation has delegated authority to issue preemption determinations that concern highway routing to the Federal Motor Carrier Safety Administration (FMSCA) and those concerning all other hazardous materials transportation issues to RSPA. 49 CFR 1.53(b) and 1.73(d)(2). Under RSPA's regulations, preemption determinations are issued by RSPA's Associate Administrator for Hazardous Materials Safety. 49 CFR 107.209(a).

Section 5125(d)(1) requires that notice of an application for a preemption determination be published in the **Federal Register**. 49 U.S.C. 5125(d)(1). Following the receipt and consideration of written comments, RSPA publishes its determination in the **Federal Register**. *See* 49 CFR 107.209(d). A 20-day period is allowed for filing petitions for reconsideration. 49 CFR 107.211. Any party to the proceeding may seek judicial review in a Federal district court. 49 U.S.C. 5125(f).

RSPA's authority to issue preemption determinations does not provide a means for review or appeal of State enforcement proceedings, nor does RSPA consider any of the State's procedural requirements applied in an enforcement proceeding. The filing of an application for a preemption determination does not operate to stay a State enforcement proceeding.

Preemption determinations do not address issues of preemption arising

[1] While advisory in nature, these inconsistency rulings were "an alternative to litigation for a determination of the relationship of Federal and State or local requirements" and also a possible "basis for an application . . . [for] a waiver of preemption." Inconsistency Ruling (IR), No. 2, Rhode Island Rules and Regulations Governing the Transportation of Liquefied Natural Gas and Liquefied Propane Gas, 44 FR 75566, 76657 (Dec. 20, 1979).

under the Commerce Clause of the Constitution or under statutes other than the Federal hazardous materials transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law. A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon*, above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), RSPA is guided by the principles and policy set forth in Executive Order No. 13132, entitled "Federalism" (64 FR 43255, Aug. 4, 1999). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence that Congress intended to preempt State law, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions that RSPA has implemented through its regulations.

One commenter to this proceeding urges DOT to "interpret its discretionary or implied preemption authorities narrowly, specifically its obstacle criteria." He states that DOT "should only allow [preemption] if it believes it is specifically statutorily required to, or if there is an evident obstacle to the purpose of a federal HMT regulatory requirement." The commenter contends that "[i]f the question is ambiguous but can be resolved by subdividing, that is better than preempting the entire issue." This, he argues, is the intent of Congress and the Federalism Executive Order.

RSPA must consider ATA/AWHMT's application under the express preemption standards of 49 U.S.C. 5125. RSPA will analyze each issue raised in this proceeding to determine if any of the non-Federal requirements meet the preemption criteria in 49 U.S.C. 5125. If preemption of a non-Federal regulation is required, RSPA, to the extent possible, will only preempt that portion of the non-Federal regulation that conflicts with the Federal regulation.

III. Comments and Decision

A. Definition of a Hazardous Material

1. County Definitions

The County, in §§ 27–352 and 27–436 of the revised Ordinance, defines the challenged definitions as follows:

Biomedical waste—also referred to as "biohazardous waste," has the meaning given it in Chapter 27, Article VI, Section 214, of the Code, as Amended.

Section 27–352. [The definition in 27–214 is substantially the same as the definition for biomedical waste contained in 27–436, below.]

Biomedical waste—means any solid or liquid waste which may present a threat of infection to humans. Examples include non-liquid tissue and body parts from humans and other primates; laboratory and veterinary waste which may contain human disease-causing agents; discarded sharps; and blood, blood products and body fluids from humans and other primates. The following are also included;

(a) Used, absorbent materials saturated with blood, body fluids, or excretions or secretions contaminated with blood and absorbent materials saturated with blood or blood products that have dried. Absorbent material includes items such as bandages, gauzes and sponges.

(b) Non-absorbent disposable devices that have been contaminated with blood, body fluids or blood contaminated secretions or excretions and have not been sterilized or disinfected by an approved method.

(c) Other contaminated solid waste materials which represent a significant risk of infection because they are generated in medical facilities which care for persons suffering from diseases requiring Strict Isolation Criteria and used by the U.S. Department of Health and Human Services, Centers for Disease Control, CDC Guideline for Isolation Precautions in Hospitals, July/August 1983.

Section 27–436.

Combustible liquid—is defined as a liquid having a flash point at or above one hundred (100) degrees Fahrenheit (37.8 degrees Celsius).

Section 27–352 (as posted on the County's Internet site on June 1, 2000).

Discarded hazardous material—means any hazardous material which has served its original intended purpose and has been or is in the process of being rejected, disposed of or recycled, or hazardous material stored or accumulated in order to be eventually rejected, disposed of or recycled. Such material may include, but is not limited to, hazardous waste, used oil, used oil filters, waste radiator fluid, industrial wastewater, petroleum contaminated media and water, contaminated soils, waste fuel, leachate, or waste photographic fixer.

Section 27–352 and Section 37–436 (with one minor variation that does not affect the definition).

Flammable liquid—is a liquid having a flash point below one hundred (100) degrees Fahrenheit (37.8 degrees Celsius) and having a vapor pressure not exceeding forty (40) pounds per square inch (absolute) (2,068 mm Hg) at one hundred (100) degrees Fahrenheit (37.8 degrees Celsius).

Section 27–352 (as posted on the County's Internet site on June 1, 2000).

Hazardous Material—is defined as any substance or mixture of substances which meets any one (1) of the following criteria:

(1) Hazardous waste as defined in this article.[2]

(2) Any substance listed in article XIII, appendix A of this chapter.[3]

(3) any petroleum product or any material or substance containing discarded petroleum products.

(4) Any substance identified as hazardous in the most current version of the following regulations:

a. Comprehensive Environmental Response Compensation, and Liability Act (42 U.S.C. § 9601, *et seq.*).

b. Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001, *et seq.*).

c. Hazardous Material Transportation Act (49 U.S.C. § 1801, *et seq.*).

d. Federal Insecticide, Fungicide, and rodenticide Act (7 U.S.C. § 136(a)–(y)).

Section 27–352 (as posted on the County's Internet site on June 1, 2000).

Sludge—means a solid waste pollution control residual which is generated by any industrial or domestic wastewater treatment plant, water supply treatment plant, air pollution control facility, septic tank, grease trap, portable toilet or related operation, or any other such waste having similar characteristics. Sludge may be solid, liquid, or semisolid waste but does not include the treated effluent from a wastewater treatment plant.

Section 27–436.

2. Comments

Several commenters argue that some of the County's definitions are not substantively the same as the definitions in the HMR. Specifically, ATA/AWHMT points out that the County's definition of "hazardous material" is broader than "hazardous material" as defined in the HMR. In addition, ATA/AWHMT contends that the County's definitions for "combustible liquid," "flammable liquid" and "biomedical waste" are not substantively the same as the HMR definitions of these materials. AAR notes that the County's definitions of "biomedical waste" and "discarded hazardous materials" also differ from the HMR. In addition, AAR points out that the County's definition of "sludge" does not have a counterpart in the HMR. Nufarm argues that the County's inclusion in its definition of "hazardous material" of (1) any petroleum product

[2] The County defines Hazardous Waste as "any substance defined or identified as a hazardous waste in 40 CFR parts 260–265 and appendices, promulgated pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, as amended, and rule 730, F.A.C., as amended." 27–352.

[3] Article XII regulates Wellfield Protection. Appendix A to Article XIII contains a list of regulated substances, an indication whether the particular substance is or is not an EPA toxic pollutant, and EPA signal word for the substance, and the amount, in gallons and pounds, required for a reportable spill.

or any material or substance containing discarded petroleum products and (2) any substance identified as hazardous in the most current version of the Federal Insecticide, Fungicide and rodenticide Act are two examples of how the County's definition is too broad and, therefore, not substantively the same as the HMR definition.

The County explains that the definitions in Article XVII, § 27–436, were modified to recognize other federal, state, municipal and county agencies that have adopted rules regulating waste transporters. In addition, the County points out that the transportation of hazardous material in its virgin state, as product rather than waste, is not regulated under Article XVII. In article XII, § 27–352, the County modified its definition of a hazardous material by removing one of its five criteria. The County states that this revised definition is now consistent with the Federal regulations.

3. Decision

Federal hazardous material transportation law preempts a non-Federal requirement on the "designation, description, and classification of hazardous material" that is not "substantively the same as" the HMR. 49 U.S.C. 5125(b)(1)(A). RSPA agrees that the six definitions of concern to the industry commenters are not "substantively the same as" their counterparts in the HMR or do not have counterparts in the HMR.

Specifically:

- The HMR definition of "regulated medical waste" at 49 CFR 173.134 appears to be most comparable to the County's definition of "biomedical waste". However, the County's definition is broader in scope than the HMR definition.
- The HMR define "combustible liquid" as "any liquid that does not meet the definition of any other hazard class specified in [the HMR] and has a flash point above 60.5°C (141°F) and below 93°C (200°F). 49 CFR 173.120(b). Under the County's definition, a combustible liquid must have a flash point at or above 37.8°C (1090°F).
- The HMR define "flammable liquid" as "having a flash point of not more than 60.5°C (141°F), or any material in a liquid phase with a flash point at or above 37.8°C (100°F) that is intentionally heated and offered for transportation or transported at or above its flash point in a bulk packaging," with certain exceptions. 49 CFR 173.120(a). Under the County's definition, a flammable liquid must have a flash point below 37.8°C (100°F) and a vapor pressure that does not exceed 40 psi at 37.8°C.
- The HMR define "hazardous material" as

> a substance or material, which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated. The term includes hazardous substances, hazardous wastes, marine pollutants, and elevated temperature materials as defined in this section, materials designated as hazardous under the provisions of § 172.101 of [the HMR], and materials that meet the defining criteria for hazard classes and divisions in part 173 of [the HMR]. 49 CFR 171.8.

As previously mentioned, the County's definition of hazardous material includes substances or mixtures of substances that are hazardous wastes (as defined by the County), substances listed by the County, petroleum products, or substances "identified as hazardous" in certain listed Federal "regulations," which actually are Federal statutes. The references to the "Hazardous Materials Transportation Act (49 U.S.C. § 1801, *et seq.*)" is over five years out of date and should have been the "Federal hazardous materials transportation law (49 U.S.C. § 5101 *et seq.*)."

- Discarded hazardous material and sludge do not have counterparts in the HMR.

The Six County definitions challenged by AWHTA/ATA are not "substantively the same as" the Federal definitions. The differences between the County's definitions and the HMR definitions are not *de minimis,* nor are they mere editorial changes. However, in order to be preempted under the Federal hazardous materials transportation law, the definitions as applied and enforced must relate to the areas regulated by DOT, as set forth above.

Article XII regulates the "generation, use, storage, handling, processing, manufacturing, and disposal of hazardous materials." Revised Ordinance 27–351. The Department of Planning and Environmental Protection (DPEP) is authorized to license, evaluate, review and administer all hazardous materials activities * * * performed in Broward County. *Id.* Article XVII regulates the transportation of discarded hazardous material, sludge, and biomedical waste and applies to "all persons conducting activities within geographic boundaries of Broward County, who transport discarded hazardous material, sludge, or biomedical waste to, from, and within Broward County." Revised Ordinance 27–435.

These two sections indicate that the County uses the challenged definitions in defining the applicability of its regulation of transportation in commerce. Therefore, the County's definitions of biomedical waste, combustible liquid, discarded hazardous materials, flammable liquid, hazardous materials and sludge are preempted under the "substantively the same as" test to the extent that they relate to transportation in commerce. In addition, all County hazardous materials requirements that apply these six definitions are also preempted.[4]

This holding is consistent with prior RSPA decisions and with case law. RSPA has consistently held that state and local hazard class and hazardous material definitions differing from those in the HMR and used to regulate in areas regulated by DOT are preempted because the Federal role is exclusive.[5] In addition, RSPA has previously determined that non-Federal definitions

[4] In discussing these requirements later in this document, RSPA ignores this definitional problem and assumes that the County's definitions pertaining to hazardous materials and hazardous materials transportation in commerce would be made consistent with the HMR.

[5] *See generally,* IR–18, Prince George's County, MD; Code Section Governing Transportation of Radioactive Materials, 52 FR 200 (Jan. 2, 1987); IR–18(A) Prince George's County, MD; Code Section Governing Transportation of Radioactive Materials, Decision on Appeal, 53 FR 28850 (July 29, 1988); IR–19, Nevada Public Service Commission Regulations Governing Transportation of Hazardous Materials, 52 FR 24404 (June 30, 1987); IR–19(A), Nevada Public Service Commission Regulations Governing Transportation of Hazardous Materials, Decision on Appeal, 53 FR 11600 (April 7, 1988); IR–20, Triborough Bridge and Tunnel Authority Regulations Governing Transportation of Radioactive Materials and Explosives, 52 FR 24396 (June 30, 1987), correction, 52 FR 29468 (Aug. 7, 1987); IR–21, Connecticut Statute and Regulations Governing Transportation of Radioactive Materials, 53 FR 37072 (Oct. 2, 1987), Decision on Appeal, 53 FR 46735 (Nov. 18, 1988); IR–26, California Department of Motor Vehicles Regulations on Training Requirements for Operators on Vehicles Carrying Hazardous Materials, 54 FR 16314 (Apr. 21, 1989), correction, 54 FR 21526 (May 19, 1989); IR–28, City of San Jose, California; Restrictions on Storage of Hazardous Materials, 55 FR 8884, (Mar. 8, 1990), appeal dismissed as moot, 57 FR 41165 (Sept. 9, 1992); IR–29, State of Maine Statutes and Regulations on Transportation of Hazardous Materials, 55 FR 9304 (Mar. 12, 1990); IR–30, Oakland, California; Nuclear Free Zone Act, 55 FR 9676 (Mar. 14, 1990), correction, 55 FR 12111 (Mar. 30, 1990); IR–31, State of Louisiana Statutes and Regulations on Hazardous Materials Transportation, 55 FR 25572 (June 21, 1990), appeal dismissed as moot, 57 FR 41165 (Sept. 9, 1992); IR–32, City of Montevallo, Alabama Ordinance on Hazardous Waste Transportation, 55 FR 36736 (Sept. 6, 1990), appeal dismissed as moot, 57 FR 41165 (Sept. 9, 1992). *See also, Missouri Pacific R.R. Co.* v. *Railroad Commission of Texas,* 671 F. Supp. 466 (W.D. Tex. 1987), *aff'd on other grounds,* 850 F.2d 264 (5th Cir. 1988), *cert. denied,* 109 S. Ct. 794 (1989).

and classifications that result in regulating the transportation, including loading, unloading or storage incidental thereto, of more, fewer or different hazardous materials than the HMR, are obstacles to uniformity in transportation regulation and thus are preempted.[6] Recently, a Federal district court found that states are precluded from designating, describing or classifying hazardous materials in a manner that differs substantively from the Federal designation, description or classification. *Union Pacific R.R.* v. *California Publ. Util. Comm'n,* No. C–97–3660–THE (N.D. Cal. June 18, 1998), *vacated in part on other grounds,* (N.D. Cal. Dec. 14, 1998).

B. Release-reporting Requirements

1. County Requirements

The revised Ordinance contains two release-reporting sections, § 27–355(a)(1) in Article XII and § 27–439(f)(1) in Article XVII.

Section 27–355(a)(1) provides:

[i]n the event of an unauthorized release of a hazardous material to the environment in an amount that is above the reportable quantity threshold * * * the responsible party shall * * * immediately report such incidents by telephone to DPEP. Written notification of verbal reports to DPEP must be provided within seven (7) calendar days. Written notification shall include at a minimum the location of the release, a brief description of the incident that caused the release or discovery, a brief description of the action taken to stabilize the situation, and any laboratory analysis, if available.

Section 27–439(f)(1) provides:

[t]he owner or operator shall report any unintentional releases during transportation to the local emergency operator (911) immediately upon learning of the release in accordance with federal and state regulations. All other releases shall be reported to the DPEP in accordance with the requirements set forth in § 27–355(a)(1) of the Code, as amended.

2. Comments

ATA/AWHMT and IME challenge the County's written release-notification requirement. They argue that the County's requirement for a "responsible party" to provide written notification of an unauthorized release that is above the reportable quantity threshold should be preempted because it is not "substantively the same as" DOT's notification requirements.

ATA/AWHMT and AAR challenge the County's telephonic release notification requirement. While ATA/AWHMT does not challenge the County's 911 telephonic notification requirement, it does object to the requirement to telephonically notify a DPEP operator in the absence of a 911 emergency telephone number. ATA/AWHMT argues that if this practice is permitted and other local jurisdictions adopt this policy, it would result in transporters being required to maintain and continuously update a directory of emergency numbers for local jurisdictions. ATA/AWHMT maintains that it would take years to compile such a directory and the task would create a tremendous burden on the transporter.

AAR contends that the County's requirement to immediately notify a 911 operator of a hazardous material release is not the same as DOT's immediate notification requirement. AAR states that 911 notification satisfies the Environmental Protection Agency's (EPA) requirements but that the HMR require immediate notification to DOT of a release of a hazardous material that is not an EPA hazardous substance. Therefore, AAR argues that the 911 telephonic notification requirement should be preempted under the "substantively the same as" test.

The County points out that it no longer requires all transporters to notify DPEP of transportation-related releases. Section 27–439(f)(1) requires that the owner/operator of a motor vehicle carrying hazardous waste immediately notify the "911-operator or in the absence of a 911-emergency telephone number * * * the * * * DPEP operator." The County states that releases of all other materials that do not involve transportation are regulated by Article XII. The commenters do not discuss how the County regulations are applied and enforced.

3. Decision

RSPA has consistently held that Federal hazardous material transportation law generally preempts only non-Federal regulations pertaining to written reporting and not those pertaining to oral reporting. This decision will address each type of release reporting separately.

a. *Written release reporting.*

Federal hazardous material transportation law preempts a non-Federal requirement on the "written notification, recording, and reporting of the unintentional release in transportation of hazardous material" that is not "substantively the same as" the HMR. 49 U.S.C. 5125(b)(1)(D). The Federal written incident-reporting requirements are in 49 CFR 171.16. Section 171.16 requires a carrier that transports hazardous material to submit to RSPA, within 30 days from the date of discovery, a written report on certain incidents that occur during the course of transportation. Such incidents include the "unintentional release of hazardous materials from a package (including a tank) or [when] any quantity of hazardous waste has been discharged during transportation." The report must be submitted directly to RSPA on DOT Form F 5800.1. 49 CFR 171.16(a).[7]

As previously mentioned, § 27–355(a)(1) requires a "responsible party" to provide written notification of verbal reports to the County of hazardous material releases. The written reports must be submitted within seven calendar days and must contain specified information about the release and any laboratory analysis that is available. The portion of Section 27–355(a)(1) pertaining to written notification of a release is not substantively the same as 49 CFR 171.16. The County states in its comments that Article XII regulates releases that do not involve transportation. However, that is not apparent from the face of the revised Ordinance, Article XII could be construed as applying to hazardous materials transportation or storage incidental to transportation.

Therefore, RSPA finds that § 27–355(a)(1), as it pertains to written notification, is preempted, but only to the extent that it relates to transportation in commerce, including storage incidental to transportation in commerce.

This determination is consistent with previous RSPA decisions involving non-Federal requirements for submission of written incident reports. In Preemption Determination (PD)–21, RSPA held that a state may require a carrier to file a written incident report with RSPA under the same conditions specified in 49 CFR 171.16 but that it may not require the carrier to file a copy of the Federal form or a separate incident report directly with the State. Tennessee Hazardous Waste Transporter Fee and Reporting Requirements, 64 FR 54474, 54481 (Oct. 6, 1999), judicial review pending, *Tennessee* v. *U.S. Dept. of Transportation,* Civil Action No. 3–99cv–1126 (M.D. Tenn.).

In IR–2, RSPA determined that a state requirement for immediate notification of a hazardous materials incident to

[6] IR–5, City of New York Administrative Code Governing Definitions of Certain Hazardous Materials, 47 FR 51991 (Nov. 18, 1982); IR–6, City of Covington Ordinance Governing Transportation of Hazardous Materials by Rail, Barge, and Highway Within the City, 48 FR 760 (Jan. 6, 1983); IR–28 (San Jose), above; IR–29 (Maine), above; IR–31 (Louisiana), above; and (IR–32 (Montevallo), above.

[7] RSPA has initiated a rulemaking to propose changes to the incident reporting requirements and to DOT Form F 5800.1. *See* RSPA's advance notice of proposed rulemaking, 64 FR 13943 (March 23, 1999).

local emergency responders was not preempted but that the follow-up written report was. RSPA stated that:

> The written notice required to be supplied to [DOT] pursuant to 49 CFR 171.16 precludes the State from requiring additional written notice directed to hazardous materials carriers. * * * In light of the Federal written notice requirement * * * it is inappropriate for a State to impose an additional written notice requirement to apply solely to carriers already subject to the Hazardous Materials Regulations. The detailed hazardous materials incident reports files with [DOT] are available to the public.

64 FR at 54480, *quoting,* IR–2 (Rhode Island), above, affirmed on appeal in IR–2(A), 45 FR 71881, 71884 (Oct. 30, 1980), and in *National Tank Truck Carriers, Inc.* v. *Burke,* 535 F. Supp. 509 (D.R.I. 1982), *aff'd,* 698 F.2d 559 (1st Cir. 1983).

In IR–3, RSPA stated that a State or locality could not require a carrier to directly submit a copy of DOT Form F 5800.1. RSPA said:

> Subsequent written reports required within 15 days by DOT are not necessary to local emergency response. The reports themselves are publicly available, and [RSPA] is prepared to routinely send copies of written reports to a designated State agency on request. Copies of written reports required by DOT under 49 CFR 171.15 may not be required by [the City's ordinance].

64 FR at 54480, *quoting from,* IR–3, City of Boston Rules Governing Transportation of Certain Hazardous Materials by Highway Within the City, 46 FR 18918, 18924 (Mar. 26, 1981). On appeal, RSPA reaffirmed its position that Boston's requirement for a carrier to submit written reports was redundant, unnecessary, and inconsistent with the HMTA and HMR. 64 FR at 54480, *citing to,* IR–3(A), 47 FR 18457, 18462 (Apr. 28, 1982).

b. *Oral release reporting.*

The legislative history of the 1990 amendments to the HMTA discloses that Congress did not intend 49 U.S.C. 5125 (b)(1)(D) to cover oral incident reporting. In a report, the House Committee on Energy and Commerce stated that:

> *Written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.*—The Committee believes uniform requirements for written notices and reports describing hazardous materials incidents will allow for the development of an improved informational database, which in turn may be used to assess problems in the transportation of hazardous materials. Without consistency in this area, data related to hazardous materials incidents may be misleading and confusing. Additional State and local requirements would also be burdensome on those involved in such incidents and may lead to liability for minor deviations. *The oral notification and reporting of unintentional releases has specifically been excluded from this paragraph in order to permit State and local jurisdictions to develop the full range of possible alternatives in emergency response capabilities (such as requiring carriers to telephone local emergency responders).*

H.R. Report No. 101–444, Par I, at 34–35 (1990) (emphasis added).

In following Congress' intent, RSPA and the courts have consistently held that requirements for immediate, oral accident/incident reports for emergency response purposes generally are consistent with Federal law and regulations and, thus, not preempted. *See,* IR–2 (Rhode Island), above; IR–3 (Boston), above; *National Tank Truck Carriers, Inc.* v. *Burke,* above; *Union Pacific R.R.* v. *California Public Util. Comm'n,* above.[8] In IR–2 (Rhode Island), RSPA sustained a state requirement to immediately notify the state police and two specific state agencies of any accident. RSPA determined that "[although the Federal Government can regulate in order to avert situations where emergency response is necessary, and can aid in local and State planning and preparation, when an accident does occur, response is, of necessity, a local responsibility." 44 FR at 75568. RSPA further concluded that "a requirement for immediate notification in certain situations furthers the State's activity in protecting persons and property through emergency response measures." *Id.* at 75572.

In IR–3 (Boston), RSPA sustained a city requirement for carriers to immediately notify the city of a hazardous material incident. RSPA stated:

> Any immediate reporting requirement, applied differentially to carriers of hazardous materials, that is necessary to support an emergency response effort is not inconsistent with the HMTA. Thus [Boston's ordinance] in requiring immediate reports for incidents that must immediately be reported to DOT under 49 CFR 171.15 is not inconsistent with the HMTA.

46 FR at 18924. RSPA affirmed its position on appeal by holding that "[f]or an incident that requires the City to undertake emergency response, we reiterate our agreement that the City must be able to require the carrier to notify it immediately. If the City wishes to conduct a thorough investigation of the events at the scene, it may do so then." 47 FR 18924.

Federal telephonic reporting requirements (49 CFR 171.15) are not designed to elicit immediate on-the-scene emergency response, but rather to assist the Federal Government in investigating and collecting data on such incidents. In *Union Pacific R.R.* v. *California Public Util. Comm'n,* above, at 7, the court held that "the very substance of the federal regulations reflect that they are not intended to address the area of emergency 'first response' but are designed to facilitate the government's ability to promptly investigate and compile data on major incidents involving hazardous materials."

For the reasons discussed above, the portion of the County's requirements in §§ 27–355(a)(1) and 27–439(f)(1) pertaining to immediate notification to a 911 operator of a hazardous materials release are not preempted. However, 911 notification does not eliminate the obligation to comply with Federal accident/incident notification requirements.

In addition, Section 27–439(f)(1) contains a requirement that "[a]ll other releases shall be reported to the DPEP in accordance with the requirements set forth in Section 27–355(a)(1) of the Code, as amended." RSPA has determined that the written reporting requirement in § 27–355(a)(1), as it relates to the transportation of hazardous materials in commerce, is preempted. Therefore, the requirement in § 27–439(f)(1) to report in accordance with written reporting requirement in § 27–355(a)(1) is also preempted to the extent that it relates to transportation of hazardous materials in commerce, including loading, unloading and storage incidental to transportation.

In its comment, that County indicates that § 27–439(f)(1) contains a provision for reporting directly to DPEP in the absence of 911 emergency telephone number. ATA/AWHMT objects to this provision because of the potential burden it would create for a transporter to compile a list of secondary emergency response numbers for the various jurisdiction in which it operates. It is not clear to RSPA what regulation the parties are referring to. The provision for notifying a DPEP operator in the absence of a 911 operator is not in the current version of the revised Ordinance, which was submitted by the County to RSPA on October 12, 1999. In addition, RSPA consulted the version of § 27–439(f)(1) currently listed on the County's Internet site and did not find any language that was different from the County's October 1999 version of the revised Ordinance. Because RSPA does not have any evidence that this regulation is in effect, RSPA will not address the issue.

[8] *See also,* IR–28 (San Jose), above; IR–31 (Louisiana), above; and IR–32 (Montevallo), above.

C. Shipping paper requirements.

1. County requirement.

The revised Ordinance has two sections that address recordkeeping, including shipping paper retention requirements, § 27–356(b)(4)d.1 in Article XII and § 27–439(g)(1) in Article XVII. Section 27–356, in general, sets forth the requirements for obtaining and operating under certain types of licenses and approvals. This section applies to (1) hazardous materials facility licenses, (2) sludge, discarded hazardous material and biomedical waste transfer station licenses, (3) environmental assessment and remediation licenses, and (4) special licenses. Section 27–356(b)(4)d.1 sets forth the specific recordkeeping and reporting requirements for hazardous material facilities that are subject to the licensing requirements. Section 27–356(b)(4)d.1 provides that:

[r]eports and records, including hazardous waste manifests, bills of lading, or other equivalent manifesting for all hazardous material disposal, shall be maintained on-site for five (5) years, and shall be available upon request for inspection by DPEP. The records, at a minimum, must identify the facility name and address, type and quantity of waste, the shipping date of the waste, and the hauler's name and address.

Section 27–439(g) contains the requirements and standards for obtaining and operating under a waste transporter license. Section 27–439(g)(1) requires that the owner or operator shall:

[m]aintain reports, and records, including waste manifest, bills of lading, or other equivalent manifesting for all discarded hazardous material, sludge, and biomedical waste disposal. Reports and records shall be maintained for three (3) years, and shall be available upon request for inspection by DPEP. The records, at a minimum must identify the generator's name and address, type and quantity of waste, the shipping date of the waste.

2. Comments

AAR argues that the County's recordkeeping requirements in § 27–439(g)(1) should be preempted as they apply to rail transporters of hazardous waste. AAR states that neither RSPA nor the EPA imposes any recordkeeping requirements on intermediate rail transporters of hazardous waste. In addition, AAR states that the County has not addressed AWHMT's initial objections to § 27–356(b)(4)d.1. Initially, AWHMT, HMAC and Freehold Cartage, Inc. objected to the County's five-year requirement for waste manifest retention. These organizations did not reassert their objections to the revised Ordinance.

3. Decision

Federal hazardous material transportation law preempts a non-Federal requirement on "the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents" that is not "substantively the same as" the HMR. 49 U.S.C. 5125(b)(1)(C). RSPA has determined that a hazardous waste manifest is a shipping document covered by 49 U.S.C. 5125(b)(1)(C). PD–2(R), Illinois Environmental Protection Agency's Uniform Hazardous Waste Manifest, 58 FR 11176 (Feb. 23, 1993). In addition, 49 CFR 172.205(h) provides that "[a] hazardous waste manifest required by 40 CFR part 262, containing all of the information required by this subpart, may be used as the shipping paper required by this subpart." Therefore, any non-Federal requirements pertaining to hazardous waste manifests that are not "substantively the same" as the Federal requirements are preempted.

The Federal requirements for hazardous waste manifests are at 49 CFR § 172.205. This section requires, among other things, that a copy of the manifest * * * must be "[r]etained by the shipper (generator) and by the initial and each subsequent carrier for three years from the date the waste was accepted by the initial carrier." 49 CFR § 172.205(e)(5). EPA also requires a three-year waste manifest retention period for hazardous waste generators and transporters. *See* 40 CFR 262.40 and 263.22. Neither RSPA nor EPA specifies where a manifest must be kept.

Section 172.205(f) of 49 CFR applies to the transportation of hazardous waste by rail. This section requires, among other things, that rail carriers "[r]etain one copy of the manifest and rail shipping paper in accordance with 40 CFR § 263.22." 49 CFR 172.205(f)(iv). Section 263.22 states that "[i]ntermediate rail transporters are not required to keep records pursuant to these regulations."

As mentioned above, § 27–356(b)(4)d.1 requires that specified licensees maintain waste manifests, bills of lading or other equivalent manifesting, for all hazardous material disposal on-site for five years. Since the County's requirement imposes a longer retention period than does the HMR, five years instead of three years, and it applies to intermediate rail transporters, which are exempt from this type of record retention under the HMR, the County's requirement is preempted under the "substantively the same as" test to the extent that the requirement differs from the HMR (and EPA) requirements for hazardous waste manifest retention.

Section 27–439(g)(1) requires that hazardous waste transporters maintain for three years waste manifests, bills of lading, or other equivalent manifesting for all hazardous material, sludge, and biomedical waste disposal. This regulation is "substantively the same as" the Federal requirements for motor vehicle transporters and, therefore, is not preempted. However, this section is not "substantively the same" as the HMR requirements for record retention by intermediate rail transporters and, therefore, is preempted as it relates to intermediate rail transporters.

D. Standards for Packaging

1. County Requirement

The County requirement provides that:

[a]ll waste transport vehicles shall be designed to effectively contain any release of discarded hazardous material, sludge, or biomedical waste during transportation. Routine maintenance to ensure the integrity of transport vehicles shall be performed by the owner or operator. Revised Ordinance 27–439(e)(2).

2. Comments

ATA/AWHMT opposes the County's requirement for packaging standards on the basis that DOT-required packagings are intended to effectively contain releases of hazardous materials during transport. ATA/AWHMT argues that the County cannot be allowed to impose packaging standards on vehicles because it believes DOT-required packagings may fail.

ATA/AWHMT contends that it is unclear how the standards will apply to packagings mounted on vehicles, such as cargo tanks, because they are equipped with pressure relief valves. In addition, ATA/AWHMT argues that the County's requirement virtually eliminates the use of flatbed trailers and other vehicles that cannot be sealed for transportation. ATA/AWHMT asserts that the requirement implies that a standard trailer design is unacceptable and vehicle modifications are necessary to use trailers for hazardous waste shipments. Finally, ATA/AWHMT states that, since there is no equivalent regulation for carriers of virgin hazardous material, the County is unfairly burdening waste hazardous materials transporters.

The County states that it deleted the reference to the term "product-tight" in the revised Ordinance to be consistent with DOT's packagings standards. The County contends that its revised

regulation is now consistent with DOT's requirements for packaging standards.

3. Decision

Federal hazardous material transportation law preempts a non-Federal requirement on "the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material" that is not "substantively the same as" the HMR. 49 U.S.C. 5125(b)(1)(E). The HMR contain specific packaging requirements for various types of hazardous materials packagings. *See generally*, 49 CFR Parts 173, 178, 179 and 180. These provisions prescribe specific design, manufacturing and testing requirements for the hazardous material packagings.

On its face, the County's requirement appears to be more general than the specification packaging requirements contained in the HMR and, therefore, is not "substantively the same as" the Federal requirements. However, there is no information that the County is applying or enforcing its requirement in a manner that conflicts with packaging provisions contained in HMR.

ATA/AWHMT raises the issue of whether certain vehicles, such as DOT-authorized cargo tanks, flatbed trailers and other vehicles that cannot be sealed for transportation, would meet the County's standard. However, ATA/AWHMT has not provided any evidence that the County has applied or enforced its packaging standard in 27–439(e)(2) to deny a license to cargo tank motor vehicles, flatbed trailers, or any other type of vehicle that cannot be sealed for transportation. RSPA has developed standards for the design, manufacturing, and fabrication of specific types of packages, such as cargo tanks. If the County's requirement, as applied or enforced, differs from RSPA's regulations, then the County's requirement will be preempted under the "substantively the same as" test.

Additionally, ATA/AWHMT initially argued that the County keys its requirements to "vehicles," which suggests that vehicles not authorized as packagings, such as trailers, must meet packaging standards. Again, ATA/AWHMT has not provided any evidence that the County's packaging standards have been applied to vehicles that are not packagings. Since there does not appear to be an actual controversy over this issue, RSPA will not address this issue at this time.

Finally, ATA/AWHMT claims that the County's regulation imposes an unfair burden on hazardous waste transporters because it applies only to them and not to carriers of virgin hazardous materials. Again, RSPA does not have sufficient evidence on how this regulation is applied and enforced to determine if any actual burden exists. However, RSPA has previously determined that a State or locality may regulate hazardous materials in a manner that is consistent with the HMR even if it does not reach as broadly as the HMR.[9]

E. Periodic Vehicle Inspection Requirements

1. County Requirement

The County's vehicle inspection requirement provides that:

[t]he owner or operator shall, upon request of DPEP, provide to DPEP the licensed vehicle for inspection for compliance with the provision of this section at any reasonable time, interval, or location. Revised Ordinance 27–439(e)(3).

2. Comments

In its revised application, ATA/AWHMT states that it understands that the County now waives the vehicle inspection requirement at § 27–439(e)(3) when a motor carrier supplies proof of compliance with the Federal periodic inspection provision at 49 CFR § 396.17 and 49 CFR part 180. Assuming that is so, ATA/AWHMT withdraws its objection to the requirement. However, ATA/AWHMT states that it continues to oppose multiple vehicle inspection requirements. AAR continues to object to the revised Ordinance as it is written. Although AAR does not believe that rail cars are considered "vehicles" under the statute, it contends that the regulation should be preempted for the reasons presented in AWHMT's original application.

The County states in its comments that Article XVII no longer requires vehicle inspections prior to utilizing a vehicle for waste transportation.

3. Decision

This issue appears to be moot. The County states that it no longer requires inspections prior to using a vehicle for waste transportation. The applicant and commenters provide no evidence or information to the contrary. Additionally, ATA/AWHMT states that it understands the County now waives the inspection requirements when a carrier demonstrates compliance with 49 CFR § 396.17 and Part 180. Since there is no information or evidence that the County requirement is being applied or enforced, a preemption determination concerning this requirement is not appropriate at this time. If, in the future, there is evidence that the County has begun applying or enforcing this requirement, then interested parties may request a preemption determination.

F. Vehicle Marking Requirements

1. County Requirement

The County's marking requirement in § 27–439(e)(4) provides that:

[t]he owner or operator shall obtain an identification tag from DPEP prior to utilizing a vehicle for hauling discarded hazardous material, sludge, or biomedical waste. The identification tag must be clearly displayed on the rear of the hauling vehicle at all times. If the tag is lost or destroyed, the owner or operator must apply for a new tag accompanied by the appropriate replacement fee. This section does not apply to vehicles which solely transport hazardous waste.

2. Comments

ATA/AWHMT did not challenge the County's marking requirement in its revised application. AAR asserts that the County's marking requirement should be preempted because it is not "substantively the same as" the Federal marking requirements. However, AAR does not identify the allegedly different Federal requirements.

HMAC and Freehold Cartage initially challenged the County's requirement. Both organizations raised a concern about the regulation's applicability to a tank truck containing certain materials in the "heel" of the truck. HMAC and Freehold Cartage pointed out that the County requirement pertains to vehicles used to transport discarded hazardous waste, which the County defines as products which have served their original intended purpose and are in the process of being rejected, disposed of or recycled. HMAC and Freehold Cartage argued that "the 'heel' in a tank truck that has unloaded its cargo and is returning to the chemical plant or proceeding to a cleaning facility for processing the residue could be considered a 'discarded hazardous waste' and the vehicle required to display a County identification tag." Both organizations contended that this would be unreasonable and impractical. However, neither organization reiterated this objection to the revised Ordinance. The County did not address its vehicle marking requirement in its comments.

3. Decision

Federal hazardous material transportation law preempts a non-Federal requirement on the "design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or container

[9] For a historical discussion of this issue *see* PD–13, Nassau County, New York, Ordinance on Transportation of Liquefied Petroleum Gases, Decision on Petition for Reconsideration (publication pending).

represented, marked, certified, or sold as qualified for use in transportation hazardous material" that is not "substantively the same as" the HMR. 49 U.S.C. § 5125(b)(1)(E). The issue here is whether the marking requirement at issue is designed to represent that a packaging or container is qualified for use in transporting hazardous material or whether it is intended to certify that the vehicle itself has passed inspection.

RSPA held in PD–13 that a permit sticker placed on a vehicle, rather than on a cargo tank, is not a hazardous materials marking and is not preempted in the absence of information that the sticker is an obstacle to accomplishing and carrying out Federal hazardous material transportation law and the HMR. Nassau County, New York, Ordinance on Transportation of Liquefied Petroleum Gases, 63 FR 45283, 45287 (Aug. 25, 1998). Nassau County, New York, was not a "marking" of hazardous material as contemplated in 49 U.S.C. 5125(b)(1)(B), as the applicant had claimed. RSPA reiterated this position in its decision on reconsideration. PD–13 (Nassau County), above, n.7.

RSPA reaches a similar conclusion in this case. According to the information provided with AWHMT's initial application, the identification tag is a license identification tag that is required for haulers of biomedical waste, discarded hazardous material or sludge. *See* Attachment E to AWHMT's initial application. The identification tag must be displayed on the rear of the vehicle. *Id.* Based on the limited information provided, it appears that the County is not attempting to identify the contents of, or qualify the hazardous materials packaging, but rather the transport vehicle. Thus, the identification tag at issue does not appear to be a "marking" as contemplated in 49 U.S.C. 5125(b)(1)(E) and therefore is not subject to the "substantively the same as" test.

Anticipating this outcome, AWHMT, in a subsequent letter, requested that RSPA evaluate the County's requirement under the "obstacle" test if RSPA determined that the "substantively the same as" test did not apply. RSPA has made this analysis and has determined that the County's marking requirement does not create an obstacle to carrying out Federal hazardous material transportation law or the HMR. As in PD–13, the applicant and industry commenters have not provided evidence that the requirement to obtain and display the required identification tag creates any obstacle. AWHMT argued that RSPA "has to anticipate that without restraint more and more non-federal entities will require such marking turning vehicles into bulletin boards and drawing attention away from the most important marking—namely that which is required by DOT." RSPA does not find this argument a sufficient basis for justifying preemption. Therefore, based on the evidence submitted, RSPA determines that there is insufficient information to find that the Federal hazardous material transportation law preempts the County's marking requirement in § 27–439(e)(4).

G. Fee Requirements

1. County Requirement

Section 27–439(a) the revised Ordinance requires that "[u]nless otherwise exempted by this article, prior to any person transporting to, from, and within Broward County any discarded hazardous material, sludge, or biomedical waste, that person shall first obtain a waste transporter license." Section 27–439(b) provides, in part, that "[a]pplications [for a waste transporter license] shall be accompanied by required fee(s) as established by the Board in Chapter 41 of the Broward County Code of Ordinances, as amended." AWHMT stated that the current fee is $175 annually per vehicle for all applicants.

2. Comments

In its original application, AWHMT argued that the County's fee structure was inherently "unfair" and should be preempted under the "obstacle" test in 49 U.S.C. 5125(a)(2). AWHMT stated that the County's per-vehicle fee was flat and unapportioned and pointed out that the *American Trucking Ass'ns* v. *Scheiner*, 483 U.S. 266, 97 S. Ct 2829 (1987), the Supreme Court held that flat and unapportioned fees violated the Commerce Clause "internal consistency" test and were therefore unconstitutional. In addition, AWHMT asserted that because they are unapportioned, flat fees could not be considered to be "fairly related" to a fee-payer's level of presence or activity in the fee-assessing jurisdiction. *Id.* AWHMT cited several subsequent court decisions that relied on these holdings to invalidate hazardous materials flat fees and taxes.

AWHMT also argued that a flat fee structure violates Federal hazardous materials transportation law, because some motor carriers would not be able to afford multiple flat fees and would be excluded from operating in some jurisdictions. AWHMT provided affidavits from carriers that claimed to have limited their operations in Broward County because of the per-vehicle fees. AWHMT argues that if the County's fee scheme is allowed, similar fees must be allowed in the other 30,000 non-federal jurisdictions. AWHMT stated that "[t]he cumulative effect of such outcome would be not only a general undesirable patchwork of regulations necessary to collect the various fees, but the balkanization of carrier areas of operation and attendant, unnecessary handling of hazardous materials as these materials are transferred from one company to another at jurisdictional borders."

Finally, AWHMT argued that the County was unfairly burdening motor carriers of hazardous waste. AWHMT stated that it had reviewed the hazardous materials incident reports filed with DOT from 1992 to 1996 and found that none of the reports involved hazardous waste releases. AWHMT indicated that there were, however, 160 non-waste hazardous materials incidents reported. AWHMT stated that 21 percent of these incidents resulted from shipments traveling through the County. Of these shipments, 12 involved air transportation and two involved rail transportation. Thus, AWHMT asserted that the regulation and fee burdens placed on hazardous waste motor carriers were not supported by the risks to the County.

In its revised application, ATA/AWHMT continues to challenge the County's licensing fees requirement for hazardous waste transporters. ATA/AWHMT contends that "the County's per-vehicle, flat, annual fee is not 'fair' within the meaning of 49 U.S.C. 5125(g)(1) because it is unapportioned and thus not based on some fair approximation of use of the services provided by the County and should be preempted." In addition, ATA/AWHMT states that the County still has not provided information about how it uses the fee. ATA/AWHMT reiterates its request that the County provide an account of the fee usage and it reserves the right to challenge the County's fee system under the "used for" test once the County provides this information.

The County states that its fee structure for a hazardous waste transporter license is currently being revised. The County anticipates that the revised fees will be based on "use of service."

3. Decision

Federal hazardous materials transportation law provides that "A State, political subdivision of a State, or Indian tribe may impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose related to transporting hazardous material, including enforcement and

planning, developing, and maintaining a capability for emergency response." 49 U.S.C. 5125(g)(1).

a. *Fairness test.* In PD–21, RSPA held that an annual remedial action fee that transporters must pay to pick up or deliver hazardous waste within the State is preempted as not "fair" when (1) it is the same for both interstate and intrastate transporters and has no approximation to the transporter's use of roads or other facilities within the State and (2) genuine administrative burdens do not prevent the application of a more finely graduated user fee. Tennessee Hazardous Waste Transporter Fee and Reporting Requirements, above. In that case, Tennessee imposed a $650 annual remedial action fee on hazardous waste transporters picking up or delivering in Tennessee, regardless of whether they were intrastate or interstate transporters. RSPA determined that Tennessee's remedial action fee was not fair under 49 U.S.C. 5125(g)(1), and therefore was preempted, because the fee was not based on some fair approximation of the use of facilities and it discriminated against interstate commerce. *Id.* at 54478 RSPA noted that "it is not simply a potential for multiple fees, but the lack of any relationship between the fees paid and the respective benefits received by interstate and intrastate carriers, that establishes discrimination against interstate commerce." *Id.*

The present case presents a similar situation. As mentioned previously, the County requires that any person transporting discarded hazardous material, sludge or biomedical waste "to, from and within" the County must obtain a waste transporter license. The fee for obtaining the waste transport license apparently is the same for every transporter. Thus, the County's fee is not fair as contemplated in 49 U.S.C. 5125(g)(1) because it is not based on some fair approximation of use of facilities and because it discriminates against interstate commerce. Therefore, the County's fee requirement in 27–439(b) is preempted. The County states that it anticipates its revised fee structure will be based on the use of service. However, that is not currently the case, and the existing regulation is preempted.

b. *"Used for" test.* As previously mentioned, Federal hazardous material transportation law requires that a State, local or Indian tribe fee related to hazardous material transportation must be used for a purpose related to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response. 49 U.S.C. 5125(g)(1). ATA/AWHMT stated that it has asked the County on several occasions to provide an explanation of how it used the fee at issue, but the County never responded. However, AWHMT did allege in a previous letter that the County used the fee as "reimburse[ment] * * * for a variety of administrative and other unidentified costs related to its general regulation of hazardous materials transporters." The County has not provided any evidence of how it uses the waste transporter licensing fees that it collects. In the absence of any evidence from the County on this issue, RSPA cannot find that the fees are used for purposes related to hazardous materials transportation, and therefore the County's fee requirement is preempted under the "used for" test.

c. *"Obstacle" test.* Because the County's requirement fails the fairness and "used for" tests in 49 U.S.C. § 5125(g)(1), it creates an obstacle to carrying out the Federal hazardous materials transportation law and thus fails the "obstacle" test in 49 U.S.C. § 5125(a)(2).

H. Reporting Requirements

1. County Requirement

The County requirement in § 27–439(g)(2) requires that the owner or operator:

[s]ubmit a monthly report to DPEP no later than the fifteenth (15) day of the succeeding month. If no waste is transported during the reporting month, the owner or operator shall send in a report stating such.

The report shall include:

a. The waste transporter name and license number;

b. The month covered by the report;

c. The total quantity of material picked up by type;

d. The total quantity of material delivered, by type, to a licensed disposal facility and identify the disposal location(s); and

e. In addition to the requirements specified in a. through d. above, waste transporters which solely transport hazardous waste shall include in the monthly report the generator's name and address, type and quantity of waste, and the date the waste was collected.

2. Comments

ATA/AWHMT contends that the County's monthly reporting requirement should be preempted under the "obstacle" test because it presents an obstacle to the safe and efficient transportation of hazardous materials. ATA/AWHMT cites the legislative history of Federal hazardous materials transportation law and the holding in *Colorado Pub. Util. Comm'n* v. *Harmon*, above, as justification for its claim. Furthermore, ATA/AWHMT points out that, with the exception of one item (the monthly totals), all of the information required in the report can be obtained from the Uniform Hazardous Waste Manifest.

The County asserts that it requires monthly reports so that it can better track the transportation and disposal activities in the County. In addition, the County states that it will use the information from the reports to assess license fees.

3. Decision

Under the "obstacle" test, a non-Federal requirement, as applied or enforced, is preempted if it creates an obstacle to accomplishing and carrying out Federal hazardous materials law or regulations. 49 U.S.C. 5125(a)(2). RSPA and the courts have held numerous times that requirements for information or documentation in excess of Federal requirements create potential delay, constitute an obstacle to execution of the Federal hazardous materials law and the HMR, and thus are preempted.[10] There is no *de minimis* exception to the "obstacle" test because thousands of jurisdictions could impose *de minimis* information requirements. IR–8(A), Decision on Appeal; State of Michigan Rules and Regulations Affecting Radioactive Materials Transportation, 52 FR 13000, 13004 (Apr. 20, 1987).

The Court of Appeals held in *Colorado Pub. Utilities Comm'n* v. *Harmon*, above, that:

[t]he Secretary's regulations contain hundreds of information and documentation requirements, all of which have been established by the Secretary to ensure the health and safety of citizens in every jurisdiction. Congress specifically found that additional documentation and information requirements in one jurisdiction create 'unreasonable hazards in other jurisdictions' and could confound 'shippers and carriers which attempt to comply with multiple and conflicting regulations.' [Pub. L. 101–615 § 2, formerly 49 U.S.C. app. § 1801].* * * In addition to obstructing Congress' objective that safety be achieved through uniformity, the expense of burdensome documentation and information requirements also is contrary to Congress' intent that regulation of hazardous materials be as cost-effective as possible. (951 F.2d at 1581).

As ATA/AWHMT points out, the County can get all of the information,

[10] *See* IR–2 (Rhode Island), above; IR–6 (Covington), above; IR–8, State of Michigan; Radioactive Materials Transportation Regulations of the State Fire Safety Board and the Department of Public Health, 49 FR 46637 (Nov. 27, 1984); IR–8(A) (Michigan), above; IR–15, State of Vermont; Rules for Transportation of Irradiated Reactor Fuel and Nuclear Waste, 49 FR 46660 (Nov. 27, 1984); IR–15(A), State of Vermont; Rules for Transportation of Irradiated Reactor Fuel and Nuclear Waste, Decision on Appeal, 52 FR 13062 (Apr. 20, 1987); IR–18 (Prince Georges County, MD, above; IR–18(A) (Prince Georges County, MD), above; IR–19 (Nevada), above; IR–19(A) (Nevada), above); IR–21 (Connecticut) above; IR–26 California DMV), above; IR–27, Colorado Regulations on Transportation of Radioactive Materials, 54 FR 16326 (Apr. 21, 1989), correction, 54 FR 20001 (May 9, 1989); IR–28 (San Jose), above; IR–30 (Oakland), above; *Chem-Nuclear Systems, Inc.* v. *City of Missoula*, No. 80–18–M (D. Mont. 1984); *Southern Pac. Transport. Co.* v. *Public Serv. Comm'n of Nevada*, 909 F.2d 352 (9th Cir. 1990), *reversing* No. CV–N–86–444–BRT (D. Nev. 1988); *Colorado Pub. Utilities Comm'n* v. *Harmon*, above, *reversing* No. 88–Z–1524 (D. Colo. 1989).

except for the monthly totals, from the Uniform Hazardous Waste Manifest. To require a transporter to provide all of the information again could create the type of confusion and lack of cost-effectiveness contemplated in the *Harmon* case discussed above. Therefore, the County's monthly reporting requirement under § 27–439(g)(2) is preempted under the "obstacle" test because it is in excess of the Federal requirements.

IV. Ruling

Federal hazardous materials transportation law preempts the following Broward County Code of Ordinances:

- Portions of Ordinances 27–352 and 27–436 containing hazardous material definitions. The definitions of biomedical waste, combustible liquid, discarded hazardous materials, flammable liquid, hazardous materials and sludge are preempted to the extent that they relate to transportation in commerce. In addition, all County hazardous materials transportation requirements that rely on these definitions are also preempted.
- Portions of Ordinances 27–355(a)(1) and 27–439(b)(1) containing release reporting requirements. The written notification requirements of these sections are preempted to the extent that they relate to transportation in commerce. The oral notification requirements of these sections are not preempted, as discussed below.
- Ordinance 27–356(b)(4)d.1 containing shipping paper retention requirements. The shipping paper requirements in this section are preempted to the extent that they differ from HMR or EPA requirements for shipping paper and waste manifest retention.
- Ordinance 27–439(b) containing a fee requirement for obtaining a waste transport license.
- Ordinance 27–439(g)(2) containing monthly reporting requirements: The reporting requirements in this section are preempted to the extent that they relate to transportation in commerce.

Federal hazardous materials transportation law does not preempt the following Broward County Code of Ordinances:

- Portions of Ordinance 27–355(a)(1) and 27–439(f)(1) containing release reporting requirements. The oral notification requirements of these sections are not preempted. However, as discussed above, the written notification requirement sections are preempted to the extent that they relate to transportation in commerce.
- Ordinance 27–439(g)(1) containing shipping paper retention requirements for motor vehicle waste transporters. However, this requirement is preempted to the extent that it applies to intermediate rail transporters.
- Ordinance 27–439(e)(2) containing standards for waste transport vehicles.
- Ordinance 27–439(e)(3) containing vehicle inspection requirements.
- Ordinance 27–439(e)(4) containing vehicle marking requirements.

V. Petition for Reconsideration/Judicial Review

In accordance with 49 CFR 107.211(a), any person aggrieved by this decision may file a petition for reconsideration within 20 days of publication of this decision in the **Federal Register.** Any party to this proceeding may seek review of RSPA's decision "in any appropriate district court of the United States * * * not later than 60 days after the decision becomes final." 49 U.S.C. 5125(f).

This decision will become RSPA's final decision 20 days after publication in the **Federal Register** if no petition for reconsideration is filed within that time. The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of this decision under 49 U.S.C. 5125(f).

If a petition for reconsideration of this decision is filed within 20 days of publication in the **Federal Register,** the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration will be RSPA's final decision. 49 CFR 107.211(d).

Issued in Washington, DC on December 20, 2000.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 00–32885 Filed 12–26–00; 8:45 am]

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Corrections

Federal Register
Vol. 65, No. 249
Wednesday, December 27, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Indirect Cost Rates for the Damage Assessment and Restoration Program

Correction

In notice document 00–31021 beginning on page 76611 in the issue of Thursday, December 7, 2000, make the following corrections:

1. On page 76611, in the second column, the subagency's name is corrected as set forth above.

2. On the same page, in the same column, under the heading **SUMMARY**, in the sixth line, "invovled" should read "involved".

3. On the same page, in the same column, under the heading **SUMMARY**, in the seventh line, "assesment " should read "assessment ".

4. On the same page, in the third column, under the heading **SUPPLEMENTARY INFORMATION**, in the 11th line, "Naitonal " should read "National".

5. On the same page, in the same column, under the same heading, in the 19th line, "Services" should read "Service".

6. On page 76612, in the first column, in the first full paragraph, in the second line, " account" should read "accounting".

7. On the same page, in the same column, under the same heading, in the second full paragraph, in the first line, "anlysis" should read "analysis".

8. On the same page, in the same column, in the last full paragraph, in the 11th line, after "and"remove "not".

[FR Doc. C0–31021 Filed 12–26–00; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Wednesday,
December 27, 2000

Part II

Environmental Protection Agency

40 CFR Part 420
Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Iron and Steel Manufacturing Point Source Category; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 420

[FRL–6897–8]

RIN 2040–AC90

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Iron and Steel Manufacturing Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action presents the Agency's proposed effluent limitations guidelines and standards for wastewater discharges from iron and steel facilities. The proposed regulation revises technology-based effluent limitations guidelines and standards for wastewater discharges associated with the operation of new and existing iron and steel facilities. This action covers sites that generate wastewater while performing the following industrial activities: Metallurgical cokemaking, ironmaking, integrated steelmaking, non-integrated steelmaking, hot forming, steel finishing including electroplating, and other operations including direct iron reduction, briquetting, and forging.

EPA estimates that compliance with this regulation as proposed would reduce the discharge of priority and non-conventional pollutants by at least 210 million pounds per year and would cost an estimated $56.5 million to $61.4 million (1999 $, pre-tax) on an annual basis, with the range reflecting two options proposed for comment. In addition, EPA expects that discharges of conventional pollutants would be reduced, by at least 31.3 million pounds per year. EPA has estimated that the annual quantifiable benefits of the proposal would range from $1.1 million to $2.7 million.

DATES: EPA must receive comments on the proposal by midnight of February 26, 2001. EPA will conduct a public hearing on February 20, 2001 at 9:00 a.m. For information on the location of the public hearing, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The public hearing will be held at the EPA auditorium in Waterside Mall, 401 M Street SW, Washington, DC.

Submit written comments to Mr. George M. Jett, Office of Water, Engineering and Analysis Division (4303), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. For hand-deliveries or federal express, please send comments to Room 607a West Tower, 401 M Street SW, Washington 20460. For additional information on how to submit comments, see "Supplementary Information, How to Submit to submit comments".

The public record for this proposed rulemaking has been established under docket number W–00–25 and is located in the Water Docket East Tower Basement, Room EB57, 401 M St. SW, Washington, DC 20460. The record is available for inspection from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. For access to the docket materials, call (202) 260–3027 to schedule an appointment. You may have to pay a reasonable fee for copying.

FOR FURTHER INFORMATION CONTACT: For technical information concerning today's proposed rule, contact Mr. George M. Jett at (202) 260–7151 or Mr. Kevin Tingley at (202) 260–9843. For economic information contact Mr. William Anderson at (202) 260–5131.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action include:

Category	Examples of regulated entities	Primary SIC and NAICS codes
Industry	• Facilities engaged in metallurgical cokemaking, ironmaking, integrated steelmaking, non-integrated steelmaking, hot forming, steel finishing including electroplating, and other operations including direct iron reduction, briquetting, and forging.	SIC • 3312 • 3316 NAICS • 3311 • 3312

The preceding table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by promulgation of this proposed rule. Other types of entities not listed in the table could also be regulated. To determine whether your facility would be regulated by promulgation of this proposed rule, you should carefully examine the applicability criteria in § 420.1 of today's proposed rule and in the applicability subsection of each proposed subpart. You should also examine the description of the proposed scope of each subpart elsewhere in this document. If you still have questions regarding the applicability of this proposed action to a particular entity, consult one of the persons listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

How To Submit Comments

EPA requests an original and three copies of your comments and enclosures (including references). Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Please submit any references cited in your comments.

Comments may also be sent via e-mail to jett.george@epa.gov. Electronic comments must specify docket number W–00–55 and must be submitted as an ASCII, Word, or WordPerfect file avoiding the use of special characters and any form of encryption. Electronic comments on this notice may be filed online at many Federal Depository Libraries. No confidential business information (CBI) should be sent via e-mail.

Protection of Confidential Business Information (CBI)

EPA notes that certain information and data in the record supporting the proposed rule have been claimed as CBI and, therefore, are not included in the record that is available to the public in the Water Docket. Further, the Agency has withheld from disclosure some data not claimed as CBI because release of this information could indirectly reveal information claimed to be confidential. To support the proposed rulemaking, EPA is presenting in the public record certain information in aggregated form or, alternatively, is masking facility identities or employing other strategies in order to preserve confidentiality claims. This approach assures that the

information in the public record both explains the basis for today's proposal and allows for a meaningful opportunity for public comment, without compromising CBI claims.

Some tabulations and analyses of facility-specific data claimed as CBI are available to the company that submitted the information. To ensure that all data or information claimed as CBI is protected in accordance with EPA regulations, any requests for release of such company-specific data should be submitted to EPA on company letterhead and signed by a responsible official authorized to receive such data. The request must list the specific data requested and include the following statement, "I certify that EPA is authorized to transfer confidential business information submitted by my company, and that I am authorized to receive it."

Overview

The preamble describes the background documents that support this proposed regulation; the legal authority for the proposal; a summary of the proposal; background information; the technical and economic methodologies used by the Agency to develop these proposed regulations and, in an appendix, the definitions, acronyms, and abbreviations used in this notice. This preamble also solicits comment and data on specific areas of interest.

Table of Contents

I. Legal Authority

These regulations are proposed under the authority of sections 301, 304, 306, 307, 308, 402, and 501 of the Clean Water Act, 33 U.S.C.1311, 1314, 1316, 1317, 1318, 1342, and 1361.

II. Legislative Background

A. Clean Water Act

Congress adopted the Clean Water Act (CWA) to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Section 101(a), 33 U.S.C. 1251(a). To achieve this goal, the CWA prohibits the discharge of pollutants into navigable waters except in compliance with the statute. The Clean Water Act confronts the problem of water pollution on a number of different fronts. Its primary reliance, however, is on establishing restrictions on the types and amounts of pollutants discharged from various industrial, commercial, and public sources of wastewater.

Congress recognized that regulating only those sources that discharge effluent directly into the nation's waters would not be sufficient to achieve the CWA's goals. Consequently, the CWA requires EPA to promulgate nationally applicable pretreatment standards that restrict pollutant discharges from facilities that discharge wastewater indirectly through sewers flowing to publicly owned treatment works (POTWs). See section 307(b) and (c), 33 U.S.C. 1317(b) & (c). National pretreatment standards are established for those pollutants in wastewater from indirect dischargers that may pass through, interfere with or are otherwise incompatible with POTW operations. Generally, pretreatment standards are designed to ensure that wastewaters from direct and indirect industrial dischargers are subject to similar levels of treatment. In addition, POTWs are required to implement local treatment limits applicable to their industrial indirect dischargers to satisfy any local requirements. See 40 CFR 403.5.

Direct dischargers must comply with effluent limitations in National Pollutant Discharge Elimination System (NPDES) permits; indirect dischargers must comply with pretreatment standards. Effluent limitations in NPDES permits are derived from effluent limitations guidelines and new source performance standards promulgated by EPA. These effluent limitations guidelines and standards are established by regulation for categories of industrial dischargers and are based on the degree of control that can be achieved using various levels of pollution control technology.

1. Best Practicable Control Technology Currently Available (BPT)—Sec. 304(b)(1) of the CWA

EPA may promulgate BPT effluent limits for conventional, priority, and non-conventional pollutants. (Priority pollutants consist of a specified list of toxic pollutants. For more information, see section IV.D.3 below.) In specifying BPT, EPA looks at a number of factors. EPA first considers the cost of achieving effluent reductions in relation to the effluent reduction benefits. The Agency also considers the age of the equipment and facilities, the processes employed, engineering aspects of the control technologies, application of various types of process changes, non-water quality environmental impacts (including energy requirements), and such other factors as the Administrator deems appropriate. See CWA 304(b)(1)(B). Traditionally, EPA establishes BPT effluent limitations based on the average of the best performances of facilities within the industry, grouped to reflect various ages, sizes, processes, or other common characteristics. Where, however, existing performance is uniformly inadequate, EPA may establish limitations based on higher levels of control than currently in place in an industrial category if the Agency determines that the technology is available in another category or subcategory, and can be practically applied.

2. Best Control Technology for Conventional Pollutants (BCT)—Sec. 304(b)(4) of the CWA

The 1977 amendments to the CWA required EPA to identify additional levels of effluent reduction for conventional pollutants associated with BCT technology for discharges from existing industrial point sources. In addition to other factors specified in Section 304(b)(4)(B), the CWA requires

that EPA establish BCT limitations after consideration of a two part "cost-reasonableness" test. EPA explained its methodology for the development of BCT limitations in July 1986 (51 FR 24974).

Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demand (BOD_5), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501).

3. Best Available Technology Economically Achievable (BAT)—Sec. 304(b)(2) of the CWA

In general, BAT effluent limitations guidelines represent the best economically achievable performance of plants in the industrial subcategory or category. The CWA establishes BAT as a principal national means of controlling the direct discharge of toxic and nonconventional pollutants. The factors considered in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the process employed, potential process changes, and non-water quality environmental impacts including energy requirements, and such other factors as the Administrator deems appropriate. The Agency retains considerable discretion in assigning the weight to be accorded these factors. An additional statutory factor considered in setting BAT is economic achievability. Generally, EPA determines economic achievability on the basis of total costs to the industry and the effect of compliance with BAT limitations on overall industry and subcategory financial conditions. As with BPT, where existing performance is uniformly inadequate, BAT may reflect a higher level of performance than is currently being achieved based on technology transferred from a different subcategory or category. BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice.

4. New Source Performance Standards (NSPS)—Sec. 306 of the CWA

New Source Performance Standards reflect effluent reductions that are achievable based on the best available demonstrated control technology. New facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the most stringent controls attainable through the application of the best available control technology for all pollutants (that is, conventional, nonconventional, and priority pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

5. Pretreatment Standards for Existing Sources (PSES)—Sec. 307(b) of the CWA

Pretreatment Standards for Existing Sources are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of publicly owned treatment works (POTW). Pretreatment standards are technology-based and are analogous to BAT effluent limitations guidelines.

The General Pretreatment Regulations, which set forth the framework for the implementation of categorical pretreatment standards, are found at 40 CFR part 403. These regulations contain a definition of pass-through that addresses localized rather than national instances of pass-through and establishes pretreatment standards that apply to all non-domestic dischargers. See 52 FR 1586 (Jan. 14, 1987).

6. Pretreatment Standards for New Sources (PSNS)—Sec. 307(c) of the CWA

Section 307(c) of the Act requires EPA to promulgate pretreatment standards for new sources at the same time it promulgates new source performance standards. Such pretreatment standards must prevent the discharge of any pollutant into a POTW that may interfere with, pass through, or may otherwise be incompatible with the POTW. EPA promulgates categorical pretreatment standards for existing sources based principally on BAT technology for existing sources. EPA promulgates pretreatment standards for new sources based on best available demonstrated technology for new sources. New indirect dischargers have the opportunity to incorporate into their plants the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

B. Section 304(m) Consent Decree

Section 304(m) requires EPA to publish a plan every two years that consists of three elements. First, under section 304(m)(1)(A), EPA is required to establish a schedule for the annual review and revision of existing effluent guidelines in accordance with section 304(b). Section 304(b) applies to effluent limitations guidelines for direct dischargers and requires EPA to revise such regulations as appropriate. Second, under section 304(m)(1)(B), EPA must identify categories of sources discharging toxic or nonconventional pollutants for which EPA has not published BAT effluent limitations guidelines under 304(b)(2) or new source performance standards under section 306. Finally, under 304(m)(1)(C), EPA must establish a schedule for the promulgation of BAT and NSPS for the categories identified under subparagraph (B) not later than three years after being identified in the 304(m) plan. Section 304(m) does not apply to pretreatment standards for indirect dischargers, which EPA promulgates pursuant to sections 307(b) and 307(c) of the Clean Water Act.

On October 30, 1989, Natural Resources Defense Council, Inc., and Public Citizen, Inc., filed an action against EPA in which they alleged, among other things, that EPA had failed to comply with CWA section 304(m). Plaintiffs and EPA agreed to a settlement of that action in a consent decree entered on January 31, 1992. The consent decree, which has been modified several times, established a schedule by which EPA is to propose and take final action for eleven point source categories identified by name in the decree and for eight other point source categories identified only as new or revised rules, numbered 5 through 12. After completing a preliminary study as required by the decree, EPA selected the iron and steel industry as the subject for New or Revised Rule #5. Under the decree, as modified, the Administrator was required to sign a proposed rule for the iron and steel industry no later than October 31, 2000, and must take final action on that proposal no later than April 30, 2002.

III. Scope/Applicability of the Proposed Regulation

EPA solicits comments on various issues specifically identified in the preamble as well as any other applicability issues that are not specifically addressed in today's notice.

A. Facilities Subject to 40 CFR Part 420

EPA is proposing effluent limitations guidelines and standards for seven subcategories of Iron and Steel facilities. Generally speaking, the universe of facilities that would be potentially subject to EPA's proposed guideline include facilities engaged in iron and steel making, whether through the use of blast furnaces and basic oxygen furnaces (BOFs), or through electric arc

furnaces (EAFs); metallurgical cokemaking facilities; stand-alone facilities engaged in hot forming and/or finishing of steel, including electroplating; and facilities engaged in other related operations such as direct iron reduction, forging, and iron briquetting.

A detailed discussion of Iron and Steel wastewaters is provided in Section IV.F. In summary, all wastewater discharges to a receiving stream or the introduction of wastewater to a publicly owned treatment works from a facility that falls within the scope of one of the proposed subparts would be subject to the provisions of this proposed rule unless specifically excluded as discussed in the following sections.

The following proposed technology options serve as the basis for the effluent limitations guidelines and standards being proposed today for the iron and steel industry. For descriptions of the subcategories, see Section IV.E. For descriptions of the technologies, see Section V.A.

Subcategory (segment)	Regulatory level	Option chosen	Technical components
Subpart A. Cokemaking:			
(By-Product Recovery)	BAT/NSPS/PSES/PSNS	BAT–3(PSES–3)	tar removal, equalization, ammonia stripping, temperature control, equalization, single-stage biological treatment with nitrification, alkaline chlorination, and sludge dewatering.
	co-proposed PSES	PSES–1	tar removal, equalization, ammonia stripping.
(Non-Recovery)	BAT/NSPS/PSES/PSNS	zero discharge	no wastewater generated.
Subpart B. Ironmaking: (Blast Furnaces) and (Sintering).	BAT/NSPS	BAT–1	solids removal with high-rate recycle and metals precipitation, alkaline chlorination, mixed-media filtration of the blowdown wastewater, and sludge dewatering.
	PSES/PSNS	PSES–1	solids removal with high-rate recycle and metals precipitation, and sludge dewatering.
Subpart C. Integrated Steelmaking	BAT/NSPS/PSES/PSNS	BAT–1	solids removal and high-rate recycle, with metals precipitation for blowdown wastewater, cooling towers for process wastewaters from vacuum degassing or continuous casting operations, and sludge dewatering.
Subpart D. Integrated and Stand Alone Hot Forming:.			
(Carbon & Alloy Steel)	BAT/NSPS	BAT–1	scale pit with oil skimming, roughing clarifier, cooling tower with high rate recycle, mixed-media filtration of blowdown, and sludge dewatering.
	PSES/PSNS	N/A	no proposed modification from existing PSES/PSNS.
(Stainless Steel)	BAT/NSPS	BAT–1	scale pit with oil skimming, roughing clarifier, cooling tower with high rate recycle, mixed-media filtration of blowdown, and sludge dewatering.
	PSES/PSNS	N/A	no proposed modification from existing PSES/PSNS.
Subpart E. Non-Integrated Steelmaking and Hot Forming:			
(Carbon & Alloy Steel)	BAT	BAT–1	solids removal, cooling tower, high rate recycle, mixed-media filtration of recycled flow or of low volume blowdown flow, and sludge dewatering.
	PSES	N/A	no proposed modification from existing PSES.
	NSPS/PSNS	zero discharge	water re-use, evaportion, or contract hauling.
(Stainless Steel)	BAT/PSES	BAT–1	solids removal, cooling tower, high-rate recycle, mixed-media filtration of recycled flow or of low volume blowdown flow, and sludge dewatering.
	NSPS/PSNS	zero discharge	water re-use, evaportion, or contract hauling.
Subpart F. Steel Finishing:			
(Carbon & Alloy Steel)	BAT/NSPS/PSNS	BAT–1	recycle of fume scrubber water, diversion tank, oil removal, hexavalent chrome reduction (where applicable), equalization, metals precipitation, sedimentation, sludge dewatering, and counter-current rinses.
	PSES	N/A	no proposed modification from existing PSES.
(Stainless Steel)	BAT/NSPS/PSNS	BAT–1	recycle of fume scrubber water, diversion tank, oil removal, hexavalent chrome reduction (where applicable), equalization, metals precipitation, sedimentation, sludge dewatering, counter-current rinses, and acid purification.
	PSES		no proposed modification from existing PSES
Subpart G. Other Operations:			
(Direct Reduced Ironmaking)	BPT/BCT/NSPS	BPT–1	solids removal, clarifier, high rate recycle, with filtration of blow-down, and sludge dewatering.
	BAT/PSES/PSNS		reserved.
(Forging)	BPT/BCT/NSPS	BPT–1	high rate recycle, with oil/water separator for blowdown.
	BAT/PSES/PSNS		reserved.

Subcategory (segment)	Regulatory level	Option chosen	Technical components
(Briquetting)	BPT/BCT/BAT/NSPS/ PSES/PSNS.	zero discharge	no wastewater generated

B. Interface With Metal Products and Machinery Rule

In preparation for this rulemaking, the Agency determined that certain facilities currently covered by the current Iron and Steel rule have manufacturing processes that more closely resemble those in facilities to be covered by the Metal Products and Machinery (MP&M) rule than those found in what are normally considered to be steel facilities. So that these facilities might be addressed under a regulation that fits them better, EPA proposes to move these types of facilities into the MP&M category, which will be regulated under part 438. The notice proposing effluent limitations guidelines and standards for the MP&M category was also required to be signed by the Administrator by October 31, 2000. EPA is required to take final action on that rule by December 31, 2002 (eight months later than the date for final action on the iron and steel rule). In developing the MP&M rule, EPA will consider survey data and sampling data collected for these types of facilities under Iron and Steel auspices.

For operations that are currently subject to part 420, EPA proposes to retain certain operations in part 420 but move others to part 438, as follows:

Retained in Part 420 (Iron and Steel)	Moved to Part 438 (MP&M)
Cold forming for steel sheet and strip	Cold forming for steel bar, rod, wire, pipe or tube.
Pipe and tube mills with hot forming	Batch steel electroplating.
Finishing with continuous electroplating of flat products (e.g. plate, sheet, strip).	Continuous electroplating or hot dip coating of long steel products (e.g. wire, rod, bar).
Continuous hot dip coating of flat steel products (e.g. plate, sheet, strip).	Batch hot dip coating of steel.
Hot forming	Wire drawing and coating.

For facilities with both iron and steel operations and MP&M or other operations discharging process wastewaters to the same wastewater treatment system, NPDES permit writers would need to use a building block approach to develop the technology-based effluent limitations. Similarly, pretreatment permit writers would need to use a building block approach or the combined wastestream formula to develop appropriate pretreatment requirements for facilities with process operations in more than one category. Permit writers and pretreatment control authorities should refer to the applicability of the proposed MP&M rule for further clarification.

EPA solicits comment on the proposed applicability of the Iron and Steel (Part 420) rule and on the proposed building block approach in regulating facilities with both iron and steel and MP&M or other operations.

C. Centralized Treatment Provision

Under the applicability section of the current regulation, 40 CFR 420.01(b), EPA identified 21 plants that were temporarily excluded from the provisions of Part 420 because of economic considerations, provided that the owner or operator of the facility requested the Agency to consider establishing alternative effluent limitations and provided the Agency with certain information consistent with 40 CFR 420.01(b)(2) on or before July 26, 1982. See 47 FR 23285 (May 27, 1982).

Today, each of the facilities identified in that section has a permit that includes effluent limitations derived from part 420. Today's proposed rule would establish new BAT limitations that EPA believes are economically achievable for each subcategory as a whole. Therefore, EPA believes that the alternate effluent limitations provisions of § 420.01(b) are no longer necessary for these facilities, and proposes to withdraw this exclusion from part 420.

IV. Rulemaking Background

A. Iron and Steel Industry Effluent Guideline Rulemaking History

EPA promulgated BPT, BAT, NSPS, and PSNS for the iron and steel category in June 1974 for basic steelmaking operations (Phase I). See 39 FR 24114 (June 28, 1974), codified at CFR part 420, subparts A–L. EPA promulgated iron and steel effluent limitations guidelines and standards (Phase II) in March 1976 that established BPT, BAT, NSPS, and PSNS for forming and finishing operations. See 41 FR 12990 (March 29, 1976), codified at 40 CFR part 420, subparts M–Z.

In response to petitions for review, the U.S. Court of Appeals for the Third Circuit remanded portions of the Phase I regulation in November 1975. See *American Iron and Steel Institute, et. al.*, v. *EPA*, 526 F.2d 1027 (3d Cir. 1975). The Court rejected all technical challenges to BPT, but ruled that BAT and NSPS for certain subcategories in Phase I were not demonstrated. The Court also ruled that EPA had not adequately considered the impact of plant age on the cost or feasibility of retrofitting pollution control equipment, did not assess the impact of the regulation on water scarcity in arid and semi-arid regions, and failed to make adequate "net/gross" provisions for pollutants found in intake waters.

In response to petitions for review, the U.S. Court of Appeals for the Third Circuit also remanded portions of the Phase II regulation in September 1977. See *American Iron and Steel Institute, et. al.*, v *EPA*, 568 F.2d 284 (3d Cir. 1977). The Court again rejected all technical challenges to BPT; however, it ruled that EPA had not adequately considered age/retrofit and water scarcity issues for BAT. The Court also invalidated the regulation as it applied to the specialty steel industry for lack of proper notice. The Court directed EPA to reevaluate its estimates of compliance costs with regard to certain "site-specific" factors and to reexamine its economic impact analysis for BAT. The Court also ruled that EPA had no authority to exempt certain steel facilities located in the Mahoning Valley of Ohio from the regulation.

The current iron and steel rule, 40 CFR part 420, was promulgated in May 1982, see 47 FR 23258 (May 27, 1982), and was amended in May 1984 as part of a Settlement Agreement among EPA, the iron and steel industry, and the Natural Resources Defense Council. See

49 FR 21024 (May 17, 1984). In promulgating part 420 in 1982, aside from the temporary central treatment exclusion for 21 specified steel facilities at 40 CFR 420.01(b), EPA provided no exclusions for facilities on the basis of age, size, complexity, or geographic location as a result of the remand issues. EPA also revised the subcategorization from that specified in the 1974 and 1976 regulations to more accurately reflect major types of production operations and to attempt to simplify implementation of the regulation by permit writers and the industry. The factors EPA considered in establishing the 1982 subcategories were: Manufacturing processes and equipment; raw materials; final products; wastewater characteristics; wastewater treatment methods; size and age of facilities; geographic location; process water usage and discharge rates; and costs and economic impacts. Of these, EPA found that the type of manufacturing process was the most significant factor and employed this factor as the basis for dividing the industry into the twelve process subcategories currently in part 420.

The 1984 amendment to part 420 affected three portions of the rule: The water bubble (see Section X.E), effluent limitations guideline modifications for BPT, BAT, BCT, and NSPS, and modifications to the pretreatment standards for PSES and PSNS for the Sintering, Ironmaking, Acid Pickling, Cold Forming, and Hot Coating Subcategories.

B. Preliminary Study

EPA was required by the terms of the consent decree described in section II.B to initiate preliminary reviews of a number of categorical effluent limitations guidelines and standards on a set schedule. The "Preliminary Study of the Iron and Steel Category" (EPA 821–R–95–037) was completed in 1995.

In the preliminary study, EPA assessed the status of the industry with respect to the regulation promulgated in 1982 and amended in 1984; identified better performing facilities that use conventional and innovative in-process pollution prevention and end-of-pipe technologies; estimated possible effluent reduction benefits if the industry were upgraded to the level of better performing facilities; discussed regulatory and implementation issues associated with the current regulation; and identified possible solutions to those issues.

Comparisons of long-term average effluent quality data for a number of better performing facilities (data represent time periods ranging from six months to more than one year) with the long-term average performance data underlying the current effluent limitations in part 420 revealed that, in all subcategories, some facilities are achieving substantially greater reductions than is required by the current regulation. In a limited number of cases, zero discharge of pollutants is being approached through pollution prevention practices. This performance reflects increased high-rate process water recycle, advances in application of treatment technologies, and advances in treatment system operations. At the same time, however, the study showed that a number of facilities fail to achieve the effluent limitations currently required by part 420.

The study also found that, because most process wastewaters from basic steelmaking operations are generated as a result of air emission control and gas cleaning, there are substantial pollutant transfers from the air media to the water and solid waste media. Also, there appear to be many pollution prevention opportunities in the areas of increased process water recycle and reuse, the cascade of process wastewaters from one operation to another, residuals management, and nondischarge disposal methods.

The Preliminary Study can be found on-line at www.epa.gov/OST/ironsteel.

C. Industry Profile

The Agency estimates that in 1997, the iron and steel industry consisted of 252 facilities owned by at least 109 companies. This estimate is based upon responses to EPA's data gathering efforts, as described in Section IV.D. Many of these companies are joint ventures with both domestic and foreign owners, including partners located in Japan, Great Britain, Germany, and India.

Although there are several iron and steel manufacturing processes (described in Section IV.E.3), the Agency has identified nine general types of sites in the Iron and Steel Category based on the operations present at each site. Table IV.C.1 shows the estimated number of facilities for each of the nine types of sites. Each facility is likely to engage in more than one manufacturing process. For instance, integrated facilities engaged in iron and steel making using blast furnaces and basic oxygen furnaces may also have one or more of the manufacturing operations, such as vacuum degassing or continuous casting, on site. Non-integrated sites engaged in steelmaking with the use of electric arc furnaces may also have vacuum degassing, ladle metallurgy, casting, hot forming, and finishing processes on site. On the other hand, stand-alone finishers that produce cold-rolled and/or coated products from hot rolled steel produced elsewhere tend to have only finishing operations on site. Finally, there are stand-alone pipe and tube facilities producing pipe and/or tube from materials manufactured off site. It is worth noting that only those pipe and tube facilities that produce hot formed pipe and tube are to be included in the Iron and Steel Category. These sites have hot forming operations and may also have finishing processes.

TABLE IV.C.1.—GENERAL TYPES OF IRON AND STEEL SITES IN THE UNITED STATES

Type of site	Total Number of sites operating in 1997
Integrated with Cokemaking	9
Integrated without Cokemaking	11
Stand-alone Cokemaking[1]	15
Stand-alone Sintering[2]	2
Stand-alone Direct-Reduced Ironmaking[3]	1
Non-integrated	94
Stand-alone Hot Forming	39
Stand-alone Finishing	70
Stand-alone Pipe and Tube	11
Total	252

[1] One of the stand-alone cokemaking plants is a nonrecovery cokemaking plant. One additional nonrecovery cokemaking plant started operations after 1997 and is not reflected in this table.

[2] One of these stand-alone sinter plants has been shut down indefinitely since 1997.

[3] One additional stand-alone direct-reduced ironmaking plant started operations after 1997.

As shown Table IV.C.1, non-integrated facilities outnumber integrated facilities by more than four to one, and stand-alone finishing facilities form the second largest group. This reflects a trend that has affected the industry for the past 25 years—a shift of steel production from generally larger, older integrated facilities to newer, smaller non-integrated facilities, and the emergence of specialized, stand-alone finishing facilities that process semi-finished sheet, strip, bars, and rods obtained from integrated or non-integrated facilities.

Integrated steel facilities are primarily located east of the Mississippi River in Illinois, Indiana, Michigan, Ohio, Pennsylvania, West Virginia, Maryland, Kentucky, and Alabama; one integrated steel facility operates in Utah. Coke plants, either stand-alone or co-located at integrated steel facilities, are located in Illinois, Indiana, Michigan, Ohio,

New York, Pennsylvania, Virginia, Kentucky, Alabama, and Utah. Non-integrated steel facilities are located throughout the continental U.S., and smaller stand-alone forming and finishing facilities are generally located near steel manufacturing sites. Process wastewater discharges in 1997 ranged from less than 200 gallons per day for a stand-alone finisher to more than 50 million gallons per day for an integrated facility.

D. Summary of EPA Activities and Data Gathering Efforts

1. Industry Surveys

EPA developed an Information Collection Request (ICR) entitled "U.S. Environmental Protection Agency Collection of 1997 Iron and Steel Industry Data" that explains the regulatory basis and usefulness of the industry surveys. The ICR was approved by the Office of Management and Budget (OMB) in August 1998. The Agency published three **Federal Register** Notices announcing (1) the intent to distribute the surveys, see 62 FR 54453 (October 20, 1997), (2) the submission of the ICR to the OMB, see 63 FR 16500 (April 3, 1998), and (3) OMB's approval of the survey instrument, see 63 FR 47023 (August 3, 1998). The Agency consulted with the major industry trade associations to develop a useful survey instrument and to ensure an accurate mailing list.

a. *Descriptions.* EPA obtained approval to distribute four industry surveys. The first two surveys were similar in content and purpose; both were designed to collect detailed technical and financial information from iron and steel sites, but they differed in size and were mailed to different facilities. In October 1998, EPA mailed the first survey, entitled "U.S. EPA Collection of 1997 Iron and Steel Industry Data" (detailed survey) to 176 iron and steel sites and the second survey, entitled "U.S. EPA Collection of 1997 Iron and Steel Industry Data (Short Form)," to 223 iron and steel sites. The short form is an abbreviated version of the detailed survey and was designed for those iron and steel sites known not to produce or process liquid steel (e.g., stand alone hot forming or steel finishing mills). EPA mailed the third and fourth surveys to subsets of facilities to obtain more detailed information on wastewater treatment system costs, analytical data, and facility production. EPA mailed the third survey, entitled "U.S. EPA Collection of Iron and Steel Industry Wastewater Treatment Capital Cost Data" (cost survey), to 90 iron and steel sites. EPA mailed the fourth survey, entitled "U.S. EPA Analytical and Production Data Follow-Up to the Collection of 1997 Iron and Steel Industry Data" (analytical daily data and production survey), to 38 iron and steel sites.

The detailed survey and short form were divided into two parts: Part A: Technical Information and Part B: Financial and Economic Information. The technical questions in the detailed survey were divided into four sections, with Sections 3 and 4 being combined in the short form:

- Section 1: General site information
- Section 2: Manufacturing process information
- Section 3: In-process and end-of-pipe wastewater treatment and pollution prevention information
- Section 4: Wastewater outfall information

The financial and economic information in the detailed survey was divided into four sections:

- Section 1: Site identification
- Section 2: Site financial information
- Section 3: Business entity financial information
- Section 4: Corporate parent financial information

The financial and economic information part of the short form contained a single section for site identification and financial information.

The general information questions asked the site to identify itself, characterize itself by certain parameters (including manufacturing operations, age, and location), and confirm that it was engaged in iron and steel activities. The Agency used this information to develop the subcategorization of the industry proposed today.

The manufacturing process section included questions about products, types of steel produced, production levels, unit operations, chemicals and coatings used, wastewater discharge from unit operations, miscellaneous wastewater sources, pollution prevention activities, and air pollution control. The Agency used data received in response to these questions to evaluate manufacturing processes, wastewater generation, and to develop regulatory options. EPA also used these data to develop the subcategorization proposed today and to estimate compliance costs and pollutant removals associated with proposed regulatory options.

EPA requested detailed information (including diagrams) on the wastewater treatment systems and discharge flow rates; monitoring analytical data; and operating and maintenance cost data (including treatment chemical usage). The Agency used data received in response to these questions to identify treatment technologies in place, to determine the feasibility of regulatory options, and to estimate compliance costs, pollutant removals, and potential environmental impacts associated with the regulatory options EPA considered for this proposal.

The outfall information questions covered permit information, discharge location, wastewater sources to the outfall, flow rates, regulated parameters and limits, and permit monitoring data. The Agency used this information to calculate the effluent limitations guidelines and standards and pollutant loadings associated with the regulatory options that EPA considered for this proposal.

The financial and economic questions requested general information, such as location and employment, information on the sites's finances, and corporate structure. EPA used data received in response to these questions to estimate economic impacts on sites and companies from the regulatory options EPA considered for this proposal.

EPA used the cost survey to request detailed capital cost data on selected wastewater treatment systems installed since 1993, including equipment, engineering design, and installation costs. EPA incorporated these data into a cost model and used them to calculate compliance costs associated with the regulatory options EPA considered for this proposal.

The analytical and production survey requested detailed daily analytical and flow rate data for selected sampling points and monthly production data and operating hours for selected manufacturing operations. The Agency used the analytical data to estimate baseline pollutant loadings and pollutant removals from facilities with treatment in place resembling projected regulatory options and to evaluate the variability associated with iron and steel industry discharges. The Agency used the production data collected to evaluate the production basis for applying today's proposed rule in NPDES permits and pretreatment control mechanisms.

b. *Development of Survey Mailing List.* EPA has collected industry supplied data from the iron and steel industry through survey questionnaires. The iron and steel industry survey questionnaires were sent by mail to a random sample of facilities that were identified from the following sources:

Association of Iron and Steel Engineers *1997 Directory: Iron and Steel Plants Volume 1, Plants and Facilities;*

Iron and Steel Works of the World (12th edition) directory;

Iron and Steel Society's *Steel Industry of Canada, Mexico, and the United States: Plant Locations* map;

Member lists from the following trade associations:

—American Coke and Coal Chemicals Institute
—American Galvanizers Association
—American Iron and Steel Institute
—American Wire Producers Association
—Cold Finished Steel Bar Institute
—Specialty Steel Industry of North America
—Steel Manufacturers Association
—Steel Tube Industry of North America
—Wire Association International;

Dun and Bradstreet Facility Index database; EPA Permit Compliance System (PCS) database;

EPA Toxic Release Inventory (TRI) database;

Iron and Steelmaker Journal "Roundup" editions;

33 Metalproducing Journal "Roundup" editions;

33 Metalproducing Journal "Census of the North American Steel Industry".

These sources were cross-referenced with one another to obtain site level information and to ensure the accuracy and applicability of each site's information before inclusion in the questionnaire mailing list. Based on these sources, EPA estimated there were 822 facilities generating iron and steel wastewater. These facilities include the ones that EPA proposes to include in the MP&M category regulated under part 438.

c. *Sample Selection.* To minimize the burden on the respondents to the survey questionnaire, EPA grouped the facilities into 12 strata by the type of manufacturing processes that took place in each facility, or if the facility presented a unique feature (strata 5 & 8). EPA intends that each stratum encompasses facilities with similar operations. This grouping of similar facilities is known as stratification. The stratification of the iron and steel industry is described in Table IV.D.1–1.

TABLE IV.D.1—IRON AND STEEL INDUSTRY STRATA

Stratum No.	Stratum name	No. of sites in stratum
1	Integrated steel sites with cokemaking	9
2	Integrated steel sites without cokemaking	12
3	Stand-alone cokemaking sites	16
4	Stand-alone direct-reduced ironmaking and sintering sites	5
5	Detailed survey certainty stratum [1]	60
6	Non-integrated steel sites	69
7	Stand-alone finishing sites and stand-alone hot forming sites	54
8	Short survey certainty stratum [2]	13
9	Stand-alone cold forming sites	62
10	Stand-alone pipe and tubes sites	164
11	Stand-alone hot coating sites	106
12	Stand-alone wire sites	252
Total		822

[1]This straturm encompasses facilities that otherwise would have included within stratum 6 and stratum 7.
[2]This stratum encompasses facilities that otherwise would have been included within strata 9 to 12.

Depending on the amount/type of information EPA determined it needed for this rulemaking and the number of facilities in a stratum, EPA either solicited information from all facilities within a stratum (i.e., performed a census) or selected a random sample of facilities within each stratum. EPA sent a survey to all the facilities in strata 5 and 8 because of the size, complexity, or uniqueness of the steel operations present at these sites. EPA also sent surveys to all the facilities in strata 1 though 4 because of their manageable numbers and because of the size, complexity, and uniqueness of steel operation present. The remaining sites in strata 6, 7, and 9 through 12 were statistically sampled. If the stratum was censused, those facilities based on the facility's probability of selection represent themselves only. For statistically sampled strata, the selected facility is given a survey weight that allows it to represent itself and other facilities, within that stratum, that were not selected to receive a survey questionnaire. See the *Statistical Support Document for the Effluent Limitations Guidelines and Standards for Iron and Steel Industry.*

d. *Survey Response.* Of the 822 facilities generating iron and steel wastewater, 399 facilities were mailed either a detailed survey or a short survey questionnaire.

Eleven sites receiving a survey did not return a completed survey and thus are considered non-respondents. Ten sites receiving surveys were not considered for further review: seven of these sites were closed, two sites were considered part of another site owned by the same company, and one site received two surveys under two mailing addresses. EPA received 378 completed surveys, including 33 sites that certified that they were not engaged in iron and steel activities.

One hundred fifty-four of the completed surveys were from sites that EPA later determined to be within the scope of the MP&M Category; EPA did not consider those responses for this proposal. Similarly, two recipients of MP&M surveys were determined to be within the scope of the Iron and Steel Category. See Section III.B for a discussion of the applicability interface between these two rules. Therefore, 191 completed iron and steel surveys and the two MP&M surveys were used in the development of today's proposed rule.

In addition to the Detailed and Short Form surveys, follow-up surveys regarding treatment system capital costs and analytical and production data were also mailed. Of the 90 Cost Surveys mailed, 88 were completed. All of the 38 Analytical and Production Surveys were completed. EPA has included in the public record all information collected for which the site has not asserted a claim of Confidential Business Information.

2. Wastewater Sampling and Site Visits

EPA visited 70 iron and steel sites in 19 states and Canada between 1997 and 1999 to collect information about each site's operations, process wastewater management practices, and wastewater treatment systems, and to evaluate each facility for potential inclusion in the

sampling program. Site visit selection was based on the type of site (as described in Section IV.C), the manufacturing operations at each facility, the type of steel produced (carbon, alloy, stainless), and the wastewater treatment operations.

EPA collected detailed information from the sites visited such as the operations associated with each manufacturing process, wastewater generation, in-process treatment and recycling systems, end-of-pipe treatment technologies, and, if the facility was a candidate for sampling, the logistics of collecting samples. EPA has included in the public record all information collected during site visits for which the site has not asserted a claim of Confidential Business Information.

Based on the information obtained during site visits, EPA selected 16 facilities to perform wastewater sampling. EPA selected sites for sampling using the following criteria:

- The site performed iron and steel operations representative of iron and steel industry facilities;
- The site performed high-rate recycling, in-process treatment, or end-of-pipe treatment technologies that EPA was considering for technology option development; and
- The site's compliance monitoring data indicated that it was operating among the better performing treatment systems in the industry or that it contained wastewater treatment process for which EPA sought data for option development.

During each sampling episode, EPA collected samples of untreated process wastewater, treatment system effluents, and other samples that would demonstrate the performance of individual treatment units. Samples were analyzed for approximately 300 analytes spanning the following pollutant classes: conventional and nonconventional pollutants, metals, volatile organics, semivolatile organics, and dioxins and furans. Analytical results from untreated samples contributed to EPA's characterization of the industry, development of the list of pollutants of concern, and development of raw wastewater characteristics. EPA used all collected data to evaluate treatment system performance and to develop discharge concentrations, pollutant loadings, and the treatment technology options for the iron and steel industry (see Section V). EPA used data collected from the effluent points to calculate the long-term averages (LTAs) and limitations for each of the proposed regulatory options (see Section IX.A.3); EPA also used industry-provided data from the Analytical and Production Survey to complement the sampling data for these calculations. During each sampling episode, EPA also collected flow rate data corresponding to each sample collected and production information from each associated manufacturing operation for use in calculating pollutant loadings and production-normalized flow rates. EPA has included in the public record all information collected for which the site has not asserted a claim of Confidential Business Information.

3. Analytical Methods

Section 304(h) of the Clean Water Act directs EPA to promulgate guidelines establishing test procedures (methods) for the analysis of pollutants. These methods allow the analyst to determine the presence and concentration of pollutants in wastewater, and are used for compliance monitoring and for filing applications for the NPDES program under 40 CFR 122.21, 122.41, 122.44, and 123.25, and for the implementation of the pretreatment standards under 40 CFR 403.10 and 403.12. To date, EPA has promulgated methods for all conventional and toxic pollutants and for several nonconventional pollutants. Table I–B at 40 CFR part 136 lists the analytical methods approved for the five conventional pollutants. Part 136 also sets forth the analytical methods for toxic pollutants. EPA has listed, pursuant to section 307(a)(1) of the Act, 65 metals and organic pollutants and classes of pollutants as "toxic pollutants" at 40 CFR 401.15. From the list of 65 classes of toxic pollutants, EPA identified a list of 126 "Priority Pollutants." This list of Priority Pollutants is shown at 40 CFR part 423, appendix A. The list includes non-pesticide organic pollutants, metal pollutants, cyanide, asbestos, and pesticide pollutants.

Currently approved methods for metals and cyanide are included in the table of approved inorganic test procedures at 40 CFR 136.3, Table I–B. Table I–C at 40 CFR 136.3 lists approved methods for measurement of non-pesticide organic pollutants, and Table I–D lists approved methods for the toxic pesticide pollutants and for other pesticide pollutants. Direct and indirect dischargers must use the test methods approved under 40 CFR 136.3, where available, to monitor pollutant discharges from the Iron and Steel industry, unless specified otherwise in part 420 or by the permitting authority. See 40 CFR 122.44 (i)(1)(iv) and 403.12(b)(5)(vi). Sometimes, methods in part 136 apply only to waste streams from specified point source categories. For pollutants with no methods approved under 40 CFR part 136, the discharger must use the test procedure specified in the permit or, in the case of indirect dischargers, other validated methods or applicable procedures. See 40 CFR 122.44 (i)(1)(iv) and 403.12(b)(5)(vi).

4. Data Sources

EPA evaluated existing data sources to gather technical and financial information and to identify potential survey recipients and facilities for site visits.

The Agency gathered technical information from iron and steel industry trade journals published from 1985 through 1997 as well as information from Iron and Steel Society Conference Proceedings. Trade journals included Iron and Steel Engineer, published by the Association of Iron and Steel Engineers (AISE); Iron and Steelmaker, published by the Iron and Steel Society (ISS); and New Steel (formerly Iron Age), published by Chilton Publications. These sources provided background information on industry storm water and wastewater issues; new and existing wastewater treatment technologies; wastewater treatment and manufacturing equipment upgrades and installations; company mergers, acquisitions, and joint ventures; and identified potential survey recipients and facilities for site visits.

EPA consulted the U.S. Bureau of Census publications, Census Manufacturers—Industry Series and Current Industrial Reports; the Paine Webber publication, World Steel Dynamics; and the American Iron and Steel Institute (AISI) publication, The Annual Statistical Report. These sources provided a variety of financial information, ranging from aggregate data on employment and payroll to steel shipments by product, grade, and market.

The Agency performed searches on the following on-line databases: Pollution Abstracts, Water Resources Abstracts, Engineering Index, Materials Business File, National Technical Information Service (NTIS), Enviroline, Compendex, and Metadex. The Agency also searched EPA's Toxic Release Inventory and Permit Compliance System. In addition, the Agency conducted a review of secondary sources, which include data, reports, and analyses published by government agencies; reports and analyses published by the iron and steel industry and its associated organizations; and publicly available financial information compiled by both government and private organizations.

5. Summary of Public Participation

EPA has strived to encourage the participation of all interested parties throughout the development of the proposed iron and steel effluent limitations guidelines and standards. EPA has conducted outreach with the following trade associations (which represent the vast majority of the facilities that will be affected by this guideline): American Iron and Steel Institute (AISI), Steel Manufacturers Association (SMA), Specialty Steel Industry of North America (SSINA), Cold Finished Steel Bar Institute (CFSBI), the Wire Association International, Incorporated (WAI), the American Wire Producers Association (AWPA), the Steel Tube Institute of North America (STINA), the American Galvanizers Association, Incorporated (AGA), and the American Coke and Coal Chemicals Association (ACCCI). EPA has met on several occasions with various industry representatives, including the AISI, SMA, AWPA, and STINA, to discuss aspects of the regulation development. EPA has also participated in industry meetings, giving presentations on the status of the regulation development on numerous occasions.

Because some facilities affected by this proposal are indirect dischargers, the Agency also conducted outreach to publicly owned treatment works (POTWs). EPA also made a concerted effort to consult with pretreatment coordinators and state and local entities that will be responsible for implementing this regulation.

EPA sponsored five stakeholders' meetings between December 1998 and January 2000. Four were in Washington, DC, and the fifth was in Chicago, IL. The primary objectives of the meetings were to present the Agency's current thinking regarding the technology bases for today's proposed revisions to 40 CFR part 420 and to solicit comments, issues, and new ideas from interested stakeholders, including members of environmental groups such as the Natural Resources Defense Council, the Environmental Defense Fund (now Environmental Defense), Atlantic States Legal Foundation, Friends of the Earth, and Save the Dunes.

During the meetings, EPA presented process flow diagrams showing preliminary technology options and potential best management practices (BMPs) that may be incorporated into a revised part 420 and/or included in National Pollutant Discharge Elimination System (NPDES) permit and pretreatment guidance. The presentations were organized by type of manufacturing process. A discussion period followed each presentation. In addition to soliciting comments on the preliminary options, EPA requested ideas from the stakeholders to identify useful incentives for greater pollution control.

At the meeting, EPA encouraged participants to supplement their oral statements with written comments and supporting data. In that regard, EPA provided a set of data-quality protocols for use when submitting data for this rulemaking effort. This handout, along with all other handouts and meeting summaries, are posted on the EPA Iron and Steel web site at http://www.epa.gov/OST/ironsteel/. All of the materials presented at the stakeholders' meetings, as well as meeting summaries and any written comments from participants, also may be found in the public record for today's proposal.

E. Subcategorization

1. Methodology and Factors Considered in Developing Proposed Subcategorization

The CWA requires EPA, when developing effluent limitations guidelines and standards, to consider a number of different factors. For example, when developing limitations that represent the best available technology economically achievable for a particular industry category, EPA must consider, among other factors, the age of the equipment and facilities in the category, location, manufacturing processes employed, types of treatment technology to reduce effluent discharges, the cost of effluent reductions and non-water quality environmental impacts. See section 304(b)(2)(B) of the CWA, 33 U.S.C. 1314(b)(2)(B). The statute also authorizes EPA to take into account other factors that the Administrator deems appropriate and requires BAT model technology chosen by EPA to be economically achievable, which generally involves consideration of both compliance costs and the overall financial condition of the industry.

EPA took these factors into account in considering whether different effluent limitations guidelines and standards were appropriate for subcategories within the industry. For example, EPA broke down categories of industries into separate classes with similar characteristics. This classification recognized the major differences among companies within an industry that may reflect, for example, different manufacturing processes, economies of scale, or other factors. Subdividing an industry by subcategories results in developing more tailored regulatory standards, thereby increasing regulatory practicability and diminishing the need to address variations among facilities through a variance process. See *Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011, 1053 (D.C. Cir. 1978).

For this iron and steel rulemaking, EPA used industry survey data and EPA sampling data for the subcategorization analysis. Various subcategorization criteria were analyzed for trends in discharge flow rates, pollutant concentrations, and treatability to determine where subcategorization was warranted. Equipment and facility age were not found to impact wastewater generation or wastewater characteristics; therefore, age was not used as a basis for subcategorization. Location impacts iron and steel facilities only in that facilities located in arid regions tend to experience greater water loss through evaporation, resulting in reduced discharge in some cases. EPA addressed this difference by selecting flow allowances for today's proposed regulation that are achievable in all regions of the country irrespective of climate. Therefore, the Agency deemed location to be insufficient grounds for subcategorization. Size (*e.g.,* acreage, number of employees) was not used as a subcategorization criterion because it did not have an influence on production-normalized wastewater flow rates or pollutant loadings. Economic impacts are discussed in Section VI and with one exception did not show a need for subcategorization on this basis. The exception is subpart E (the Integrated and Stand Alone Hot Forming subcategory) for which EPA is proposing alternative BAT approaches to account for possible economic issues. See Section IX.E.1. While non-water quality environmental characteristics (solid waste and air emission effects) are of concern to EPA, these characteristics did not constitute a basis for subcategorization. Environmental impacts from solid waste disposal and from the transport of potentially hazardous wastewater are dependant on individual facility practices; EPA could not identify any common characteristics particular to a given segment of the industry. Air emissions also provided EPA with no basis for different treatment than those suggested by the prevailing factors.

EPA identified manufacturing processes as the determinative factor for subcategorization. In addition, EPA used manufacturing processes, type of product, and wastewater characteristics (*i.e.,* production-normalized flow rates, pollutants present) to establish segments within each subcategory where

appropriate. The following section describes the iron and steel manufacturing processes.

2. General Description of Manufacturing Processes

The Iron and Steel Category covers sites that generate wastewater while performing one or more of the following industrial activities: Cokemaking, sintering, ironmaking, steelmaking, vacuum degassing, ladle metallurgy, casting, hot forming, finishing processes (which include salt bath descaling, acid pickling, cold rolling, annealing, alkaline cleaning, hot coating, and electroplating), direct-reduced ironmaking, briquetting, and forging. The following is a brief description of each of these manufacturing processes.

Cokemaking: Carbon in the form of metallurgical coke is used to reduce beneficiated iron ores and other forms of iron oxides to metallic iron in blast furnaces. In by-product coke plants, coal is distilled in refractory-lined, slot-type ovens at high temperatures in the absence of air. The moisture and volatile components of the coal are collected and processed to recover by-products, including crude coal tars, crude light oil (aromatics, paraffins, cycloparaffins and naphthenes, sulfur compounds, nitrogen and oxygen compounds), anhydrous ammonia or ammonium sulfate, naphthalene, and sodium phenolate. Wastewater is generated from moisture contained in the coal charge to the coke ovens (waste ammonia liquor) and from some of the by-product recovery operations.

Two cokemaking operations in the U.S. use nonrecovery technology. Both plants use Sun Coke Company's proprietary non-recovery technology. These plants use negative pressure coke ovens to prevent leakage of air/smoke to the atmosphere, and higher temperatures to destroy volatile organics. The organic compounds are destroyed within the oven during the cokemaking process. The nonrecovery cokemaking process does not generate any process wastewater.

Sintering: Sinter plants are used to beneficiate (upgrade the iron content of) iron ores and to recover iron values from wastewater treatment sludges and mill scale generated at integrated steel mills. A mixture of coke breeze (fine coke particles), iron ores, sludges, mill scales, and limestone are charged to a traveling grate furnace. The mixture is ignited and air is drawn through the bed as it travels toward the exit end. Sinter of suitable size and weight is formed for charging to the blast furnace. Wastewaters are generated from wet air pollution control devices on the wind box and discharge ends of the sinter machine.

Ironmaking: Blast furnaces are used to produce molten iron, which makes up about two-thirds of the charge to basic oxygen steelmaking furnaces. The raw materials charged to the top of the blast furnace include coke, limestone, beneficiated iron ores, and sinter. Hot blast (preheated air) is blown into the bottom of the furnace. Molten iron is tapped into refractory-lined cars for transport to the steelmaking furnaces. Molten slag, which floats on top of the molten iron, is also tapped and processed for sale as a by-product.

The hot blast exits the furnace top as blast furnace gas in enclosed piping and is cleaned and cooled in a combination of dry dust catchers and high-energy venturi scrubbers. Direct contact water used in the gas coolers and high-energy scrubbers comprises nearly all of the wastewater from blast furnace operations.

Steelmaking: Steelmaking in the U.S. is conducted either in basic oxygen furnaces (BOFs) or electric arc furnaces (EAFs). BOFs are typically used for high tonnage production of carbon steels at integrated mills; EAFs are used to produce carbon steels and low tonnage alloy and specialty steels at non-integrated mills.

Integrated steel mills use BOFs to refine a metallic charge consisting of approximately two-thirds molten iron and one-third steel scrap by oxidizing silicon, carbon, manganese, phosphorus and a portion of the iron. Oxygen is injected into the molten bath. Off-gases from BOFs in the U.S. are controlled by one of three methods:

Semi-wet: Furnace off-gases are conditioned with moisture prior to processing in electrostatic precipitators;

Wet-open combustion: Excess air is admitted to the off-gas collection system allowing carbon monoxide to combust prior to high-energy wet scrubbing for air pollution control; and

Wet-suppressed combustion: Excess air is not admitted to the off-gas collection system prior to high-energy wet scrubbing for air pollution control.

Non-integrated mills use EAFs to melt and refine a metallic charge of scrap steel. Most EAFs are operated with dry air cleaning systems with no process wastewater discharges. There are a small number of wet and semi-wet systems.

Vacuum degassing: In this batch process, molten steel is subjected to a vacuum for composition control, temperature control, deoxidation, degassing, decarburization, and to otherwise remove impurities from the steel. Oxygen and hydrogen are the principal gases removed from the steel. In most degassing systems, vacuum is provided by barometric condensers; thus, direct contact between the gases and the barometric water occurs.

Ladle metallurgy: In this batch process, molten steel is refined in addition to, or in place of, vacuum degassing. These operations include argon bubbling, argon-oxygen decarburization (AOD), electroslag remelting (ESR), and lance injection. These additional refining operations do not use process water.

Casting: Molten steel is tapped from the BOF or EAF into ladles for transport. From the ladles, the molten steel is either processed in ladle metallurgy stations and/or vacuum degassers prior to casting into semi-finished shapes in continuous casters. Less than ten per cent of the steel produced in the United States is cast into ingots. Steel cast into ingot molds must undergo cooling, mold stripping, reheating, and primary hot rolling to produce the same semi-finished shape that can be produced with continuous casting. The continuous casting machine includes a tundish (receiving vessel for molten steel), water-cooled molds, secondary cooling water sprays, containment rolls, oxygen-acetylene torches for cutoff, and a runout table. Molten steel is transferred from the ladle to the tundish and then to the water-cooled molds at controlled rates. The steel solidifies as it passes through the molds and is cut to length on the runout table. Wastewater is generated by a direct contact water system used for spray cooling and for flume flushing to transport scale from below the caster runout table.

Hot forming: Ingots, blooms, billets, slabs, or rounds are heated to rolling temperatures in gas-fired or oil-fired reheat furnaces, and formed under mechanical pressure with work rolls to produce semi-finished shapes for further hot or cold rolling, or finished shapes for shipment. Process water is used for scale breaking, flume flushing, and direct contact cooling.

Finishing processes: These processes include salt bath and electrolytic sodium sulfate descaling, acid pickling, cold forming, annealing, cleaning, and hot coating and electroplating:

Salt bath descaling—Oxidizing and reducing molten salt baths are used to remove heavy scale from specialty and high-alloy steels. Process wastewaters originate from quenching and rinsing operations conducted after processing in the molten salt baths.

Electrolytic sodium sulfate descaling is performed on stainless steels for

essentially the same purposes as salt bath descaling.

Acid pickling—Solutions of hydrochloric, sulfuric, hydrofluoric/nitric and nitric acids are used to remove oxide scale from the surfaces of semi-finished products prior to further processing by cold rolling, cold drawing, and subsequent cleaning and coating operations. Process wastewaters include spent pickling acids, rinse waters, and pickling line fume scrubbers.

Cold rolling—Cold rolling is conducted on hot rolled and pickled steels at ambient temperatures to impart desired mechanical and surface properties in the steel. Process wastewater results from using synthetic or animal-fat based rolling solutions, many of which are proprietary.

Annealing—Annealing is a heat treatment process performed to relieve stresses, increase softness, ductility, and toughness, and/or to produce a specific microstructure to the steel. It is performed in a batch or continuous process. Batch processes do not use process water. Wastewaters from continuous processes result principally from associated alkaline cleaning operations and quenching.

Hot coating—Immersion of precleaned steel into baths of molten metal. Common metal types include: Tin, zinc (galvanizing), combinations of lead and tin (terne coating), and combinations of aluminum and zinc. Hot coating is typically used to improve resistance to corrosion, and for some products, to improve appearance and paintability. Wastewaters result principally from cleaning operations prior to the molten bath.

Electroplating—Immersion of precleaned steel into baths for the purpose of electrodepositing a metal onto the steel surface. Common metal types include: tin, chromium, zinc, and nickel. Process wastewaters include spent plating baths, rinse waters, and blowdowns from fume scrubbers.

Direct-reduced ironmaking (DRI): This process produces relatively pure iron by reducing iron ore in a furnace below the melting point of the iron produced. DRI is used as a substitute for scrap steel in EAFs to minimize contaminant levels in the melted steel and to allow economic steel production when market prices for scrap are high. Process wastewaters are generated from air pollution control devices.

Briquetting: The process of agglomerating or forming materials into discrete shapes of sufficient size, strength, and weight for charging to a subsequent process (*e.g.,* briquetting wastewater sludges for charging to a blast furnace). Briquetting does not generate process wastewaters.

Forging: A hot forming operation in which a metal piece is shaped by hammering. Process wastewaters are generated in the form of direct contact cooling water.

3. Proposed Subcategories

In today's notice, EPA proposes to discard the current subcategorization scheme and to establish seven new subcategories for the iron and steel industry. The proposed revised subcategorization not only reflects the modern state of the industry, in terms of both process and wastewater management, but it also incorporates the experience that the Agency and other regulatory entities have gained from implementing the current iron and steel effluent limitations guidelines and standards. Additionally, the proposed revised subcategorization simplifies the regulatory structure by reflecting co-treatment of compatible wastewaters, which is currently practiced by the industry. This practice also provides economic advantage because compatible pollutants from different manufacturing processes can be treated in a single treatment unit. The seven revised subcategories proposed for the iron and steel rulemaking are as follows:

- Cokemaking
- Ironmaking
- Integrated Steelmaking
- Integrated Hot Forming—Stand Alone Hot Forming Mills
- Non-Integrated Steelmaking and Hot Forming Operations
- Steel Finishing Operations
- Other Operations

The following table presents a comparison of the current subcategorization scheme and the one being proposed today:

TABLE IV.E.1.—SUBCATEGORY COMPARISON OF CURRENT AND PROPOSED REGULATIONS

Current regulation	Proposed regulation
A. Cokemaking	A. Cokemaking
B. Sintering	B. Ironmaking
C. Ironmaking	
D. Steelmaking	C. Integrated Steelmaking
	E. Non-Integrated Steelmaking and Hot Forming
E. Vacuum Degassing	
F. Continuous Casting	
G. Hot Forming	D. Integrated and Stand-Alone Hot Forming
H. Salt Bath Descaling	F. Steel Finishing
I. Acid Pickling	
J. Cold Forming	
K. Alkaline Cleaning	
L. Hot Coating	
	G. Other Operations

Each subcategory is described in more detail immediately below in terms of its manufacturing processes and wastewater characteristics. Some subcategories are further segmented to reflect differences in manufacturing operations, wastewater characteristics, or required treatment technologies.

Cokemaking—Subpart A

Subcategory	Segment
A: Cokemaking Operations.	By-Product Other (Non-recovery, etc.)

Cokemaking is proposed as a subcategory because of the uniqueness of the manufacturing processes within the iron and steel industry and the characteristics of wastewaters generated by by-product cokemaking operations. EPA proposes to drop the current segmentation on the basis of "iron and steel" and "merchant" coke plants because differences in wastewater flow rates observed in the 1982 rulemaking

are no longer apparent within the current population of by-product coke plants.

Cokemaking operations are segmented into by-product and other operations, which comprise currently non-recovery and heat-recovery coke plants. Any new cokemaking technologies would fall in this segment. This segmentation reflects the fundamental differences in the respective manufacturing processes. The by-product cokemaking technology provides for extensive processing of materials derived from the coal charged to the coke ovens, including coke oven gas and coal tars, as well as light oils and ammonia or ammonia compounds. The cokemaking process itself generates a waste ammonia liquor made up of the moisture from the coal and volatile and semi-volatile organic compounds. Other wastewaters are generated from the by-product recovery operations. Non-recovery and heat-recovery coke plants, on the other hand, do not generate process wastewaters. Only limited amounts of non-process wastewaters in the form of boiler blowdown result from these operations.

Ironmaking—Subpart B

Subcategory	Segment
B: Ironmaking Operations.	Blast Furnace, Sintering

The proposed ironmaking subcategory comprises sintering and blast furnace operations. Wastewaters result from wet air pollution control systems at sinter plants and wet gas cleaning systems for blast furnaces. The wastewaters are similar in character in terms of the pollutants present (ammonia, cyanide, phenolic compounds and metals) and are universally co-treated where wet sinter plants are co-located with blast furnaces. The subcategory is segmented to take into account differences in the model treatment system flow rates used to develop the proposed effluent limitations guidelines and standards.

Integrated Steelmaking—Subpart C

The proposed integrated steelmaking subcategory comprises four manufacturing processes: Basic Oxygen Furnace (BOF) steelmaking, ladle metallurgy, vacuum degassing, and continuous casting. Section IV.E.2 describes these processes in more details. The wastewater generated from the integrated steelmaking operations originates from wet scrubbing for air pollution control of the BOF process, direct contact water with gases from the vacuum degassing process, and direct contact water used for spray cooling and for flume flushing to transport scale from the casting process. Although these processes differ in wastewater flow rates per ton of production, their wastewaters can be and are commonly co-treated. The proposed limitations for this subcategory are based on a single treatment technology but reflect different production normalized flow rates for each process.

This proposed subcategory would encompass steelmaking operations at integrated mills and at non-integrated mills operating basic oxygen furnaces. Currently, one BOF shop is operated at a non-integrated mill and would be included in this proposed subcategory.

Integrated and Stand-Alone Hot Forming Mills—Subpart D

Subcategory	Segment
D: Integrated and Stand-Alone Hot Forming Mills.	Carbon and Alloy Stainless

This proposed subcategory would encompass hot forming operations at integrated and stand-alone hot forming mills. The wastewater generated from the proposed integrated and stand-alone hot forming subcategory originates from process water used for scale braking, flume flushing, and direct contact cooling. Although these processes differ in wastewater flow rates per ton of production, their wastewaters can be and are commonly co-treated. The proposed limitations for this subcategory are based on a single treatment technology but reflect different production normalized flow rates for each process.

EPA proposes to divide the integrated and stand-alone hot forming mills subcategory into two segments—carbon and alloy steel and stainless steel—in order to account for the different product types and wastewater characteristics. Both segments produce steel in primary, section, flat, pipe, or tube.

Non-Integrated Steelmaking and Hot Forming Operations—Subpart E

Subcategory	Segment
E: Non-Integrated Steelmaking and Hot Forming Operations.	Carbon and Alloy Stainless

This proposed subcategory would encompass steelmaking and hot forming operations at non-integrated mills. The wastewater generated from this proposed subcategory originates from the air pollution control process of EAFs, direct contact water with gases in the vacuum degassing process; direct contact water used for spray cooling and for flume flushing to transport scale in the casting process; and process water used for scale braking, flume flushing, and direct contact cooling in the hot forming process. EPA proposes to divide the non-integrated steelmaking and hot forming operations subcategory into two segments—carbon and alloy steel operations and stainless steel operations—because of the difference in product types and in the wastewater characteristics. Each segment encompasses the following manufacturing processes: EAF steelmaking, ladle metallurgy, vacuum degassing, continuous casting, and hot forming. Although these processes differ in wastewater flow rates per ton of production, their wastewaters can be and are commonly co-treated. The proposed limitations for this subcategory are based on a single treatment technology but reflect different production normalized flow rates for each process.

Steel Finishing Operations—Subpart F

Subcategory	Segment
F: Steel Finishing Operations.	Carbon and Alloy Stainless

This proposed subcategory would encompass all finishing operations that take place at integrated, non-integrated, and stand-alone mills. The wastewater generated from the proposed steel finishing subcategory originates from cleaning, rinsing, and quenching operations, spent solution from the acid pickling, alkaline cleaning, and electroplating operations, fume scrubber wastewater, and process water resulting from the use of synthetic or animal-fat based solutions. EPA proposes to segment the steel finishing subcategory into carbon and alloy steel operations and stainless steel operations because of the nature of the steel finishing operations and the associated wastewater characteristics. Each segment may include a combination of the following processes: acid pickling and other descaling, cold forming, alkaline cleaning, hot coating, and electroplating. Section IV.E.2 describes these manufacturing processes in more detail. Although these processes differ in wastewater flow rates per ton of production, their wastewaters can be and are commonly co-treated. The proposed limitations for this subcategory are based on a single treatment technology but reflect different production normalized flow rates for each process.

Other Operations—Subpart G

Subcategory	Segment
G: Other Operations	Direct-Reduced Ironmaking Forging Briquetting

EPA proposes to combine the three remaining iron and steel operations in a single catch-all subcategory with segments for three specific operations: direct-reduced ironmaking (DRI), forging, and briquetting. Section IV.E.2 describes these manufacturing processes in more detail. The three segments differ in manufacturing operations and in waste generation and characteristics. DRI operations currently take place at stand-alone facilities and non-integrated mills. Forging operations take place at stand-alone and non-integrated mills. Briquetting operations take place at integrated and non-integrated mills. The wastewater generated from this proposed subcategory originates from fume scrubbers from the DRI process and direct contact cooling water from the forging process.

F. Wastewater Characterization

The following sections present wastewater sources, pollutants of concern, and flow rates for each proposed subcategory. Estimates for pollutant loadings are presented in Section V.C.

The principal purpose of identifying subcategory-specific pollutants of concern (POCs) is to screen pollutants for possible regulation. Such pollutants may be either conventional, priority, or non-conventional pollutants as defined by the Clean Water Act, and may be limited directly in part 420, or limited indirectly through control of other pollutants. The Agency took the following approach to identify POCs and, thereafter, to narrow that list to those pollutants that are proposed for regulation.

As the first step, EPA conducted a sampling and analytical program at 16 steel industry sites. EPA sampled and analyzed a broad list of pollutants for purposes of identifying pollutants present in wastewaters from each type of process operation and determining their fate in industry wastewater treatment systems. As the next step, EPA determined for each pollutant subject to the sampling and analytical program whether it met the following detection criteria in wastewaters from that subcategory:

- The pollutant was detected at greater than or equal to ten times the analytical minimum level (ML) concentration in at least 10 percent of all untreated process wastewater samples; and
- The mean detected concentration in untreated process wastewater samples was greater than the mean detected concentration in the source water samples.

EPA identified as pollutants of concern all pollutants that met these screening criteria. EPA's final step was to determine which of these pollutants to regulate, either directly through promulgated limitations and standards or indirectly through the control of another pollutant (*e.g.*, an indicator or surrogate). Of the POCs identified by EPA, the Agency is proposing not to regulate those that were detected at environmentally insignificant concentrations; those typically not associated with process wastewaters from specific process operations; and those that were detected at low concentrations, but determined to be below treatability levels for those pollutants.

The Agency considered three pollutants as POCs for all subcategories, independent of the above criteria: total suspended solids (TSS), Oil and Grease measured as hexane extractable material (HEM), and total petroleum hydrocarbons measured as silica gel treated-hexane extractable material (SGT–HEM). These pollutants are present to some degree in nearly all steel industry process wastewaters and are important indicators of overall wastewater treatment system performance. The pH level is also an important wastewater characteristic and an important indicator of wastewater treatment system performance in many applications in the steel industry. Therefore, EPA is proposing to regulate pH in today's proposed rule. However, EPA did not evaluate pH for the purposes of the Agency's effluent reduction benefit or cost-effectiveness analyses, since pH is not expressed in terms of quantity or concentration.

This section also discusses the Agency's methodology for selecting the process wastewater flow rate for each manufacturing operation that corresponds to the best available technology for the particular subcategory or segment. These flow rates are expressed in terms of gallons of water discharged per ton of production (gpt) for all operations except with respect to certain wet air pollution control devices for steel finishing operations where the flow rates are expressed in gallons per minute (gpm).

For those manufacturing operations where high-rate recycle is a principal component of the model BAT, NSPS, PSES, or PSNS treatment systems, the Agency has selected production-normalized flow rates (PNFs) on the basis of best demonstrated flows achievable by the subcategory or segment as a whole. (For some segments, the best demonstrated flow for the subcategory as a whole is zero.) In these systems, the owner or operator directly controls the volume of the discharge by controlling the process water treatment and recycle system. This is accomplished by managing the amounts of make-up water and storm water entering the system; removing and/or minimizing the potential for once-through non-process wastewaters entering the system; and by controlling recirculating water chemistry to prevent fouling and scaling, where necessary. In general, the PNFs for these subcategories/segments have been significantly reduced for the proposed standards, relative to those on which the original standards are based. This means that the proposed mass-based standards are significantly tighter than existing standards, even where the wastewater treatment technology on which the standards are based has not changed. A detailed presentation of the PNFs on which the existing standards are based can be found in Section VII of the Technical Development Document.

For those manufacturing operations where high-rate recycle is not a principal component of the model BAT, NSPS, PSES, or PSNS treatment systems, the Agency has chosen to use a PNF representing the PNFs reported by the better performing facilities in those subcategories and segments. In general, these also represent reductions in the PNFs used to derive the existing standards, although not by as much as for the subcategories/segments where high-rate recycle is part of the proposed technology basis. EPA recognizes that in some cases, the PNFs selected by the Agency may not be appropriate for all mills within a subcategory or manufacturing process subdivision. Therefore, the Agency solicits comments and supporting information and data regarding alternative PNFs that may be appropriate for particular manufacturing operations.

1. Cokemaking

a. *Wastewater Sources.* The proposed Cokemaking Subcategory encompasses segments for by-product and non-recovery cokemaking. Non-recovery cokemaking does not generate process wastewater. Wastewater from by-product cokemaking operations is generated from a number of sources. The greatest volume of wastewater

generated at every by-product site is excess ammonia liquor, which is the condensed combination of coal moisture and volatile compounds liberated from the coal during the coking process. Nearly all sites reported other sources of wastewater, including: coke ovèn gas desulfurization, crude light oil recovery, ammonia still operation, final gas coolers, NESHAP controls for benzene, barometric condensers, coke oven gas condensates, equipment cleaning, and wet air pollution control devices used to control emissions from coal charging and coke pushing. Excess water used for coke quenching is another wastewater source. Water used for coke quenching is typically plant service water or treated coke plant wastewater. EPA does not advocate the practice of coke quenching with untreated wastewater because of potential air pollution and ground water contamination associated with this practice. Most plants now collect and treat some process area storm water and at least one facility collects and treats contaminated ground water from its coke plant ground water remediation system.

b. *Pollutants of Concern.* From sampling data and industry-provided data from the Analytical and Production Survey, EPA determined that by-product cokemaking wastewaters contain oil & grease, ammonia-N, cyanides, thiocyanates, phenolics, benzene, toluene, xylene, benzo(a)pyrene, and numerous other volatile organic compounds and polynuclear aromatic compounds. From these data, EPA identified 74 POCs for the Cokemaking Subcategory: 4 conventionals, 1 non-conventional metal, 30 non-conventional organics, 10 other non-conventionals, 22 priority organics, 3 priority metals, 1 other priority pollutant (total cyanide), biochemical oxygen demand (BOD), total Kjeldahl nitrogen (TKN), and nitrate/nitrite-N as POCs (the last three because of their importance as indicators of biological treatment effectiveness).

c. Wastewater Flow Rates. The median volume of process wastewater generated at well-operated by-product coke plants is approximately 100 to 110 gallons per ton (gpt) of coke and coke breeze produced. Approximately 30 to 40 gpt is excess ammonia liquor; the remaining flow comprises the other sources listed above. Operators of some direct discharging facilities often add up to 50 gpt of control water to their biological treatment systems to dilute wastewater toxicity and, to some extent, control temperature. The Agency is using a PNF for the by-product recovery cokemaking segment of 158 gpt. EPA is proposing that supplemental allowances be available to sites operating wet coke oven gas desulfurization systems (15 gpt) or NESHAP control systems (10 gpt). EPA believes that these PNFs can be achieved by all by-product recovery coke plants with good water management practices.

The Agency is using a PNF of 0 gpt of process wastewater for the non-recovery cokemaking segment.

2. Ironmaking

a. *Wastewater Sources.* The proposed Ironmaking Subcategory encompasses segments for sintering and blast furnace ironmaking. Wet air pollution control systems are the primary source of process wastewater at sinter plants. All of the sinter plants generating process wastewater reported using scrubbers to control wind box emissions and some sites also used scrubbers to control emissions at the discharge end of the sinter strand.

Gas cleaning systems that utilize high-energy scrubbers and gas coolers are the primary sources of process wastewater for blast furnace operations. Other, relatively minor sources of process wastewater include blast furnace gas seals, blast furnace drip legs. Some sites reported excess water from slag quenching.

b. *Pollutants of Concern.* Based on its analysis sampling data and industry-provided data from the Analytical and Production Survey, EPA determined that sintering wastewaters contain the following principal pollutants: TSS, O&G, ammonia-N, cyanide, phenolic compounds, and metals (principally lead and zinc), while the principal pollutants from blast furnaces are TSS, ammonia-N, cyanides, phenolic compounds, and metals (copper, lead, and zinc). EPA also found that sintering wastewaters contain polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurnas (PCDDs and PCDFs, or dioxins and furans).

EPA identified 28 POCs for the blast furnace segment of the Ironmaking Subcategory: 2 conventionals, 7 non-conventional metals, 1 non-conventional organic, 10 other non-conventionals, 6 priority metals, 1 other priority pollutant (total cyanide), and TKN because of its direct relationship to ammonia-N, a principal pollutant in ironmaking wastewaters.

EPA identified 66 POCs for the sintering segment of the Ironmaking Subcategory: 2 conventionals, 6 non-conventional metals, 24 non-conventional organics, 11 other non-conventionals, 11 priority organics, 10 priority metals, 1 other priority pollutant (total cyanide), and TKN because of its direct relationship to ammonia-N, a principal pollutant in ironmaking wastewaters.

EPA documented dioxins and furans in air emissions from two U.S. sinter plants, one with dry and one with wet air pollution control. These findings of PCDDs/PCDFs (dioxins) in air emissions from sintering are consistent with the results of studies in Europe and Scandinavia during the 1980s. On the basis of process considerations (*e.g.*, feed materials, combustion), EPA sampled for dioxins and furans in wastewaters from the following primary steelmaking operations: by-product coke plants, sinter plants, blast furnaces, and steelmaking basic oxygen furnaces. EPA found several dioxin and furan congeners in one of two sampled sinter plant treatment effluents. EPA did not find 2,3,7,8-TCDD, which is considered to be the most toxic of all dioxin and furan congeners. However, EPA did detect a furan congener in the form of 2,3,7,8-TCDF, as well as other congeners. In order to evaluate the toxicity of all of these congeners, EPA converted the detected quantities into values equivalent to the toxicity of 2,3,7,8-TCDD. Taken together, these dioxin and furan congeners are equivalent in toxicity to 0.09 nanograms/L of 2,3,7,8-TCDD. EPA thus considers these dioxin and furan congeners to be Pollutants of Concern for sinter plants with wet air pollution control technology under the ironmaking subcategory.

c. *Wastewater Flow Rates.* Nearly half of the operating sinter plants use dry air pollution control systems and, therefore, do not generate process wastewater. Discharge flow rates below 75 gpt are demonstrated at two of the six sinter plants with wet air pollution controls. Eight of the 24 blast furnaces achieve blowdown rates of 25 gpt and lower by operating high-rate (>95%) gas cleaning recycle systems. Several sites report zero discharge by using blowdown from gas cleaning systems for slag quenching. EPA does not advocate slag quenching with blast furnace process wastewaters because of documented ground water contamination associated with this practice. EPA is using a 75 gpt PNF for the sintering segment, representing a flow achievable by sites operating their process water systems at recycle rates equal to or greater than 95%, and 25 gpt for the blast furnaces segment, representing a flow achievable by sites operating their process water systems at recycle rates equal to or greater than 98%. The Agency believes that all sites can achieve these selected PNFs through good water management practices in

blast furnace and sinter plant process water treatment and recycle systems.

3. Integrated Steelmaking

a. *Wastewater Sources.* The proposed Integrated Steelmaking Subcategory encompasses the following operations: BOF steelmaking, ladle metallurgy, vacuum degassing and continuous casting. Wet air pollution control systems are the primary process wastewater source from BOF steelmaking. Three types of wet air pollution control systems are used to control BOF emissions: Semi-wet, wet-open combustion, and wet-suppressed combustion. Some sites reported other BOF process wastewater sources including excess slag quenching water, and equipment cleaning water. Vacuum systems (*e.g.,* barometric condensers, steam ejectors) are the process wastewater source from vacuum degassing systems. Spray contact water systems used for product cooling and flume flushing are the largest process wastewater sources from continuous casters. Some sites reported other continuous casting process wastewater sources including torch table water and equipment cleaning water. Other process wastewater sources include intermittent water losses from closed caster mold and machine noncontact cooling water systems.

b. *Pollutants of Concern.* Based on its analysis of sampling data and industry-provided data from the Analytical and Production Survey, EPA determined that the principal pollutants from BOFs are TSS and metals (lead and zinc). Vacuum degassing wastewaters contain low levels of TSS and metals (lead and zinc) which volatilize from the steel. Casting wastewaters typically contain TSS, O&G measured as HEM, and low levels of particulate metals.

Using the POC selection criteria presented above, EPA identified the following 28 POCs for the Integrated Steelmaking Subcategory: 2 conventionals, 9 non-conventional metals, 6 other non-conventionals, 1 priority organic, and 10 priority metals.

c. *Wastewater Flow Rates.* Three types of wet air pollution control systems (semi-wet, wet-suppressed combustion, wet-open combustion) are commonly used in the BOF steelmaking operations, and each system has a different wastewater flow rate. EPA is using a PNF of 10 gpt for BOFs operating semi-wet systems. Half the operating BOFs operating semi-wet systems are discharging less than this amount. Some operators report achieving zero discharge by balancing the applied water for gas conditioning with evaporative losses. Two of eight BOFs operating wet-open combustion gas cleaning systems discharge less than 20 gpt, and two of the seven BOFs operating wet-suppressed combustion gas cleaning systems discharge less than 20 gpt. EPA is using a PNF for recycle system blowdown of 20 gpt at BOFs with wet-open combustion gas cleaning systems, and 20 gpt for BOFs equipped with wet-suppressed combustion gas cleaning systems. A small number of BOFs report achieving zero discharge, or very low discharge, but not all sites are able to achieve this because of safety considerations. Four of 12 sites operating vacuum degassing systems report a flow rate less than 15 gpt, and six of 29 continuous casters report a wastewater discharge rate less than or equal to 20 gpt. EPA is using a PNF of 15 gpt for vacuum degassing operations, and a PNF of 20 gpt for continuous casting operations.

4. Integrated and Stand-Alone Hot Forming

a. *Wastewater Sources.* The proposed Integrated and Stand-Alone Hot Forming subcategory consists of two segments: Carbon and alloy, and stainless. The primary process wastewater source for facilities in both segments is contact water systems used for scale removal, roll cooling, product cooling, flume flushing, and other line operations. Some sites reported other wastewater sources, including roll shops, basement sumps, lubricating oil conditioning systems, strip coilers, scarfer water, wet air pollution control systems, and equipment cleaning water.

b. *Pollutants of Concern.* Based on its analysis of sampling data and industry-provided data from the Analytical and Production Survey, EPA determined that the principal pollutants from integrated and stand-alone hot forming facilities are TSS, O&G measured as HEM, and low levels of particulate metals.

EPA identified the following 12 POCs for the carbon and alloy segment of the Integrated and Stand-Alone Hot Forming Subcategory: 1 conventional metal, 4 non-conventional metals, 4 other non-conventionals, and 3 priority metals. EPA identified the following 16 POCs for the stainless segment of the Integrated and Stand-Alone Hot Forming Subcategory: 2 conventionals, 4 non-conventional metals, 4 other non-conventionals, and 6 priority metals. Although EPA found lead at relatively low concentrations in sampled hot forming wastewaters, lead is considered as a POC for both segments of this subcategory because extensive industry-supplied data indicates lead exists in appreciable quantities in many hot forming wastewaters across the industry.

c. *Wastewater Flow Rates.* High-rate recycle, with recycle rates in excess of 95%, is a standard pollution prevention technique for all types of hot forming operations. Twenty-one of 68 integrated and stand-alone hot forming mills have reported flow rates less than or equal to 100 gpt. EPA is using a 100 gpt PNF at integrated and stand-alone hot forming mills. EPA has determined that 100 gpt PNF represents the best demonstrated flows at integrated and stand-alone hot forming mills that operate at a 95% recycle rate.

5. Non-Integrated Steelmaking and Hot Forming

a. *Wastewater Sources.* The proposed Non-Integrated Steelmaking and Hot Forming Subcategory consists of two segments: carbon and alloy, and stainless. These segments encompass the following operations: EAF (electric arc furnace) steelmaking, ladle metallurgy, vacuum degassing, continuous casting, and hot forming. All but one EAF in the United States are equipped with dry or semi-wet air pollution controls and operate with no process wastewater discharges. The process wastewater source from the one EAF with a wet air pollution control system is the scrubber water; however that facility is being converted to a dry air cleaning system, and no new EAFs are likely to be constructed with wet air controls. Accordingly, the Agency is not proposing separate limits for EAFs with wet air pollution controls. Any EAF constructed in the future with wet air controls will have to meet the limits for dry systems. The wastewater sources for non-integrated vacuum degassing, non-integrated continuous casting, and non-integrated hot forming are the same as those listed for operations at integrated and stand-alone facilities.

b. *Pollutants of Concern.* From sampling data and industry-provided data from the Analytical and Production Survey, EPA determined that the principal pollutants for vacuum degassing operations, continuous casters and hot forming mills are TSS and metals. O&G (measured as HEM and SGT–HEM) is found in process wastewaters from continuous casting and hot forming operations.

EPA identified the following 11 POCs for the carbon and alloy segment of the Non-Integrated Steelmaking and Hot Forming Subcategory: 2 conventionals, 1 non-conventional metal, 5 other non-conventionals, and 3 priority metals. EPA selected lead as a POC for the reasons set out above for integrated and stand-alone hot forming mills. EPA

identified the following 23 POCs for the stainless segment of the Non-Integrated Steelmaking and Hot Forming Subcategory: 2 conventionals, 6 non-conventional metals, 7 other non-conventionals, 1 priority organic, and 7 priority metals. EPA selected lead as a POC for the reasons set out above for integrated and stand-alone hot forming mills.

c. *Wastewater Flow Rates.* Non-integrated mills have demonstrated lower discharge volumes than hot forming at integrated and stand alone mills because less water is used at these mills. Two types of air pollution control systems (semi-wet, and dry) are commonly used in the EAF steelmaking operations, and each system has a different wastewater flow rate. Dry air cleaning systems generate no process wastewater. In addition, the hot-forming manufacturing process produces steel in primary, section, flat, pipe, or tube; each product type generates a different wastewater flow rate. Ten of 25 non-integrated vacuum degassing systems and 30 of 73 non-integrated continuous casting systems reported discharge rates less than 10 gpt. EPA is using PNFs for non-integrated vacuum degassing systems and continuous casters of 10 gpt each. Forty-two of 94 non-integrated hot forming operations report flows less than or equal to 50 gpt. EPA is using a PNF of 50 gpt for non-integrated hot forming operations, which represents the best demonstrated flows for non-integrated hot forming operations operating at a 95% recycle rate. Many non-integrated sites report zero discharge of process wastewater using high-rate recycle systems for the entire mill and alternative disposal methods, although available data suggests that it would not be economically achievable for the entire subcategory, or even any definable sub-group of the existing facilities, to be able to achieve zero discharge of process wastewater.

6. Steel Finishing

a. *Wastewater Sources.* The proposed Steel Finishing Subcategory consists of two segments: Carbon and Alloy Steels and Stainless Steels. The Carbon and Alloy segment comprises acid pickling (typically with hydrochloric or sulfuric acids), cold forming, alkaline cleaning, hot coating, and electroplating operations. The Stainless segment includes salt bath and electrolytic sodium sulfate (ESS) descaling, acid pickling (typically with sulfuric, nitric, and nitric/hydrofluoric acids), cold forming, and alkaline cleaning. Salt bath descaling process wastewaters are generated from quenching and rinsing operations conducted after the steel is processed in the molten salt baths and from fume scrubbers. ESS descaling wastewaters result from spent baths, rinse waters, and fume scrubbers. Acid pickling process wastewaters include spent pickling acids, rinse waters, and pickling line fume scrubbers. Process wastewaters from cold rolling processes result from spent synthetic or animal-fat based rolling solutions and equipment cleaning. Continuous annealing wastewaters originate from associated alkaline cleaning operations. Alkaline cleaning process wastewaters include cleaning solution and rinse water blowdown. Wastewaters from hot coating operations result from product rinses, fume scrubbers, and cleaning operations. Wastewaters from electroplating operations result from acid and alkaline cleaning operations, plating solution losses, plating solution conditioning and treatment, and fume scrubbers. Tank clean-outs and equipment cleaning are other wastewater sources reported by a number of sites.

b. *Pollutants of Concern.* Based on its analysis of sampling data and industry-provided data from the Analytical and Production Survey, EPA determined that the principal pollutants from salt bath descaling in the stainless segment are TSS, cyanides, hexavalent and trivalent chromium, and nickel. The principal pollutants from acid pickling in both segments are TSS and metals, although for carbon steel operations, the principal metals are lead and zinc; and for stainless steel, chromium and nickel. The principal pollutants in cold rolling wastewaters are TSS, O&G measured as HEM, and metals (lead and zinc for carbon steels and chromium and nickel for stainless steels; chromium may also be a contaminant from cold rolling of carbon steels resulting from wear on chromium-plated work rolls). Toxic organic pollutants including naphthalene, other polynuclear aromatic compounds, and chlorinated solvents have been found in cold rolling wastewaters.

Because alkaline cleaning baths do not attack or dissolve the surface of the steel processed, the principal pollutants generated from alkaline cleaning operations are O&G removed from the steel. There is the potential for the presence of low levels of toxic organic pollutants found in cold rolling solutions. The principal hot coating pollutants are usually those associated with the coating metal or metal combinations and hexavalent chromium for lines with chromium brightening or passivation operations. Typical electroplating pollutants are TSS and O&G generated from the precleaning operations and the plated metals from plating solution losses, rinsing, and fume scrubbers.

In addition to these pollutants which EPA identified through its POC selection criteria process, EPA selected sulfate and total cyanide as POCs because these pollutants are present in sulfuric acid pickling wastewaters and reducing salt bath descaling wastewaters, respectively. (EPA did not sample these two wastewaters during the sampling program and therefore did not apply its POC selection criteria.)

EPA identified a total of 38 POCs for the carbon and alloy segment of the Steel Finishing Subcategory: 2 conventionals, 10 non-conventional metals, 7 non-conventional organics, 9 other non-conventionals, 2 priority organics, and 8 priority metals. EPA identified a total of 51 POCs for the stainless segment of the Steel Finishing Subcategory: 11 non-conventional metals, 17 non-conventional organics, 9 other non-conventionals, 4 priority organics, 9 priority metals, and one other priority pollutant (total cyanide).

c. *Wastewater Flow Rates.* EPA subdivided manufacturing operations by product type to capture differences in flow associated with different types of products and different metals coated. This approach should address product quality issues associated with water use. Although a number of mills engaging in certain finishing operations claim to need a relatively high PNF, information in today's record did not support a different PNF for the subcategory as a whole.

The acid pickling, other descaling, and alkaline cleaning operations are performed on various steel products such as sheet, strip, coil, bar, billet, rod, pipe, tube, and plate; and each product type generates a different wastewater flow rate. For cold forming, the manufacturing process could be conducted in either single or multiple mill stands, and the rolling solutions can be applied in a once-through, recirculated, or a combined manner; and the various application technique generates a different wastewater flow rate. For the electroplating process, either chrome/tin or other metals can be applied to sheet, strip, coil, and plate; and each product type generates a different wastewater flow rate.

No stand-alone salt bath descaling lines were found during the analysis of the iron and steel industry, and the industry did not report isolated flows for salt bath descaling lines that are co-located with combination acid pickling lines. Therefore, flow rates for salt bath descaling are included in the flow rates for combination acid pickling.

Wastewater discharge rates for acid pickling vary by product and steel type. Wastewater discharge rates for acid pickling vary by product and steel type, as well as acid used (in the case of carbon and alloy steels). For hydrochloric acid pickling of carbon and alloy steel, EPA is using a PNF of 50 gpt for sheet and strip (achieved by 18 of 47 lines), 490 gpt for bar, billet, rod, and coil, and 1020 gpt for pipe and tube. For sulfuric acid pickling of carbon and alloy steel, EPA is using a PNF of 230 gpt for strip and sheet (achieved by five of nine lines), 280 gpt for bar, billet, rod, and coil, and 500 gpt for pipe and tube. For acid pickling of stainless steel, EPA is using a PNF of 230 gpt for bar and billet (representing the median flow rate), 700 gpt for sheet and strip (achieved by 19 of 50 lines), and 35 gpt for plate (representing the median flow rate). For all pickling operations with fume scrubbers, EPA is using a normalized flow rate of 15 gallons per minute (gpm). The PNFs for hydrochloric and sulfuric acid pickling for bar, billet, rod, and coil and pipe and tube are retained from the 1982 Iron and Steel regulation. The Agency obtained current PNFs for the other four pickling operations. EPA is using a PNF of 100 gpm for acid regeneration.

Wastewater discharge rates for cold forming vary by the number of mill stands, steel type, and whether rolling solutions are recirculated. EPA is using the following PNFs: single stand, direct application—3 gpt; single stand, recirculation—1 gpt; multi-stand, direct application—275 gpt; multi-stand, recirculation—25 gpt; multi-stand, combination—143 gpt. EPA is using a PNF for the alkaline cleaning sections of continuous annealing lines of 20 gpt (achieved by seven of 16 stand alone annealing lines). Wastewater discharge rates for alkaline cleaning vary by product and steel type. For carbon and alloy steel, EPA is using a PNF of 350 gpt for sheet and strip and 20 gpt for pipe and tube. EPA is using a PNF of 2,500 gpt for stainless sheet and strip. EPA is using a PNF of 550 gpt for hot dip coating operations. With the exception of continuous annealing, each of these represents the median of PNFs observed.

Discharge rates for electroplating vary by the type of metal applied. EPA is using a PNF of 1,100 gpt for tin and chromium sheet and strip lines; 550 gpt for other sheet and strip lines. EPA is using a PNF of 35 gpt for electroplating of steel plate. Each of these represents the median of PNFs observed. For all electroplating operations with fume scrubbers, EPA is using a normalized flow rate of 15 gpm.

7. Other Operations

a. *Wastewater Sources.* The subcategory EPA proposes for other operations encompasses segments for direct-reduced ironmaking, forging, and briquetting. Wet air pollution control systems are the primary process wastewater source for DRI operations. Contact water comprises the majority of the process wastewater from forging operations. Some sites identified equipment cleaning as another source of wastewater from forging operations. Briquetting operations use dry air pollution controls and do not generate process wastewater.

b. *Pollutants of Concern.* EPA has only limited sampling and industry-provided data from the Analytical and Production Survey for forging, briquetting, and DRI operations. EPA solicits comments and additional data for these operations.

Based on all available data, EPA found that the principal pollutant parameter from DRI facilities is TSS. For forging, the principal pollutants are TSS, O&G measured as HEM, and metals. All briquetting operations are dry.

Using the POC selection criteria presented above, EPA identified 8 POCs for the Other Operations Subcategory: 1 conventional, 4 non-conventional metals, and 3 other non-conventionals.

c. *Wastewater Flow Rates.* The Agency found forging operations to be similar to other hot forming operations, and therefore used a 96% recycle rate, as demonstrated for other hot forming operations, as the basis for PNF determination, giving a PNF for forging operations of 100 gpt. EPA is using a PNF for DRI operations of 90 gpt, which was demonstrated by two of three DRI plants engaged in high rate recycling of their scrubber wastewater.

V. Technology Options, Costs, and Pollutant Reductions

A. Introduction

This section describes the technology options and associated costs and pollutant reductions that EPA evaluated in developing the effluent limitations guidelines and standards proposed today for the seven subcategories. To determine the technology basis and performance level for the proposed regulations, EPA developed a database consisting of daily effluent data collected from the Analytical and Production Survey and the EPA wastewater sampling program. EPA used this database to support the BPT, BAT, NSPS, PSES, and PSNS effluent limitations guidelines and standards proposed today. While EPA has proposed effluent limitations guidelines and standards based on a combination of processes and treatment technologies, EPA is not proposing to require a discharger to use those processes or technologies in treating the wastewater. Rather, the processes and technologies used to treat iron and steel wastewaters are left to the discretion of each facility; EPA would require only that the numerical discharge limits are achieved.

In order to establish the proposed limits, EPA reviewed data from treatment systems in operation at a number of iron and steel facilities and used the data to calculate concentration limits that are achievable based on a well-operated system using the proposed model processes and wastewater treatment technologies. In Section C below, EPA presents a summary of the technology options EPA considered for the proposed effluent limitations guidelines and standards in each subcategory.

1. Focused Rulemaking Approach

EPA is developing this regulation using a focused rulemaking approach, which involves conducting several aspects of data gathering and analysis activities in parallel and assessing only a limited number of regulatory options. This is unlike the traditional approach where EPA conducts these efforts in a serial manner and considers a wider range of regulatory options. The focused rulemaking approach is feasible for the iron and steel regulation because the Agency has acquired a good understanding of the industry, its associated pollutants, and the available control and treatment technologies from its prior rulemaking efforts. Furthermore, EPA also adopted the focused approach for the iron and steel regulation in order to meet a court-ordered schedule (see Section II.B). In general, the focused approach allows EPA to have a more focused data gathering process and reduces the time spent investigating marginal regulatory options. EPA then evaluates each option it identifies in accordance with the statutory factors, *e.g.*, the removal efficiencies and economic achievability of various model treatment technologies.

A successfully implemented focused rulemaking process involves a combination of early analysis of available information, focused data collection effort, and extensive stakeholder involvement. A key component of the data gathering process was using a questionnaire distributed under authority of section 308 of the Clean Water Act. See Section IV.D. EPA worked with stakeholders in developing

this questionnaire, which was approved by the Office of Management and Budget. For the iron and steel rulemaking, EPA utilized its 1997 questionnaire results from individual facilities, in conjunction with EPA's field sampling data, to assess the wastewater characteristics and the effectiveness of various pollution control and treatment technologies for the industry. In addition, EPA also supplemented the database with information voluntarily submitted by industry, permitting and pretreatment authorities, and vendors. Furthermore, by involving the stakeholders early in the rulemaking, the Agency also developed a good understanding of the experience that the industry has gained from pollution control technologies implemented since the 1980's, when the current rule was promulgated.

In addition to early information gathering and analysis, extensive stakeholder involvement is also an important element of the focused rulemaking process. EPA met with the industry, environmental groups and other stakeholders at various stages of the rulemaking process to discuss the preferred options and identify issues of concern. For instance, between December 1998 and January 2000, EPA sponsored five stakeholder meetings to present the technology bases for the Agency's preliminary options and to solicit comments and ideas from the stakeholders. Section IV.D.5 contains additional information regarding the various stakeholder meetings. EPA also expects to gather additional information through the public comment process.

As the result of this focused process, the Agency is proposing a streamlined group of seven subcategories that will be used as the framework for revising the existing effluent limitations guidelines and standards. Section IV.E explains the basis for the proposed subcategorization. Section V.C and IX contain detailed information on technology options that were considered and the selected technologies, respectively.

During the public comment period on today's proposed rule, EPA plans to continue its data gathering and analysis efforts for support of the final rule. EPA may publish in the **Federal Register** a subsequent notice of data availability for data and information that the Agency may use to support the final rule. Such data may be generated by EPA or submitted by stakeholders in response to this proposal.

EPA encourages full public participation in developing the final Iron and Steel Effluent Limitations Guidelines and Standards. EPA welcomes comment on all options and issues and encourages commenters to submit additional data during the comment period. EPA also is willing to talk with interested parties during the comment period to ensure that EPA considers the views of all stakeholders and the best possible data upon which to base a decision for the final regulation. EPA will conduct a public hearing during the public comment period.

2. Available Technologies

The treatment technologies used by the iron and steel industry consist of in-process treatment and reuse of process solutions and process waters, and end-of-pipe physical-chemical and biological treatment.

The in-process, physical-chemical, and biological treatment technologies in use at Iron and Steel facilities include:

- *Acid purification:* An in-process resin technology applied to spent acid baths to adsorb acid and allow contaminants to pass into a waste stream. The process produces an acid which is reused for acid pickling.
- *Acid Regeneration:* Thermal decomposition of spent pickle liquor, which contains free hydrochloric acid, ferrous chloride, and water.
- *Alkaline Chlorination:* Chemical addition of chlorine in a two-stage, pH-adjusted system to oxidize cyanide, ammonia, phenols, and other organic compounds.
- *Biological Treatment:* There are several forms of biological treatment. For the purpose of this regulation, biological treatment refers to an activated sludge system with nitrification; a continuous flow, aerobic treatment process which employs suspended-growth aerobic microorganisms to biodegrade organic contaminants and oxidize ammonia to nitrate. A portion of the biomass is collected and returned to the activated sludge system.
- *Clarification:* Usually a circular, cone-bottom steel or concrete tank with a center stilling well and mechanical equipment at the bottom for settling and subsequent removal of suspended solids from the wastewater stream.
- *Classification:* Any device, such as a dragout tank or screw classifier, used to aggregate and remove large suspended solids from wastewater.
- *Coagulation/flocculation:* Coagulation/flocculation causes small suspended solids such as precipitated metal hydroxides and biological mixed liquor solids to aggregate into larger particles with a density greater than water. The particles are then separated from the wastewater by gravity settling.
- *Cooling Tower:* Direct cooling through evaporative heat transfer to lower the temperature of non-contact cooling water or process water prior to further treatment or recycle.
- *Countercurrent Rinses:* The use of a series of rinse tanks to minimize the amount of water used to clean the surface of steel products. Rinse water overflows from one tank to another in a direction opposite the flow of steel product.
- *Cyanide Precipitation:* Cyanide precipitation combines free cyanide with iron to form an insoluble iron-cyanide complex that can be precipitated and removed by gravity settling.
- *Diversion Tank:* Tank used to handle hydraulic or waste loading surges in cases of emergency overflow.
- *Emulsion Breaking:* Addition of de-emulsifying agents such as heat, acid, metal coagulants, polymers, and clays to oily wastewaters to break down emulsions and produce a mixture of water and free oil and/or an oily floc.
- *Equalization:* Equalization through proper retention and mixing in a tank dampens variation in hydraulic and pollutant loadings, thereby reducing shock loads and increasing treatment facility performance.
- *Free and Fixed Ammonia Still:* Ammonia distillation is the transfer of gas (ammonia) dissolved in a liquid (coke plant excess flushing liquor) into a gas stream (steam). In the coke industry, flushing liquor is pumped to the top of a tray-type distillation tower while steam is injected into the base. As the rising steam passes through the boiling flushing liquor moving down the tray tower, ammonia is transferred from the liquid to the gas phase, eventually passing out the top of the tower. A "free" still operates with steam only, with no alkali addition, to remove ammonia and acid gases (hydrogen cyanide, hydrogen sulfide). A "fixed" still is similar to a "free" still except lime or sodium hydroxide is added to the liquor to convert the water soluble ammonium ion to ammonia which can be removed as a gas.
- *Granular Activated Carbon :* The use of granular activated carbon to remove dissolved organic compounds from wastewater. When the attractive forces at the carbon surface overcome the attractive forces of the liquid, organic pollutants adsorb to the carbon particle surface. Pollutants in the water phase will continue to bond to the activated carbon until all surface bonding sites are occupied. When all bonding sites are occupied, the carbon is considered to be "spent" and is either disposed or regenerated.

• *Heat Exchanger:* Device which allows indirect cooling through the use of noncontact cooling water to lower the temperature of wastewater prior to biological treatment.

• *Hexavalent Chromium Reduction:* The use of a reducing agent to convert hexavalent chromium to trivalent chromium.

• *High-Rate Recycle:* A system of pumps and piping which return treated and temperature adjusted process water back to a steel manufacturing process or air pollution control unit. For purposes of this proposed rule, high-rate recycle means recycle of the circulating flow at 95 percent or higher.

• *Metals Precipitation:* The removal of metal contaminants from aqueous solutions by converting soluble, metal ions to insoluble metal hydroxides. The precipitated solids are then removed from solution by coagulation/flocculation (see definition above) followed by clarification and/or filtration. Precipitation is caused by the addition of chemical reagents such as sodium hydroxide, lime or magnesium hydroxide to adjust the pH of the water to the minimum solubility of the metal.

• *Mixed-media Filtration:* Mixed-media filtration involves a fixed (gravity or pressure) or moving bed of porous media that traps and removes suspended solids from water passing through the media.

• *Oil/water Separation:* Oil/water separators are usually long rectangular tanks in which free oil floats to the surface, where it can be skimmed off. Often inclined parallel plates are added to serve as collecting surfaces for oil globules. Oil/water separation is typically preceded by emulsion breaking (see definition above).

• *pH Control:* The use of chemical addition and mixing to adjust the pH of wastewater to a desired pH level, usually in the range of 8.5 to 9.0 for effective metals precipitation.

• *Roughing Clarifiers:* High surface loading clarifiers designed to remove settleable solids from wastewater prior to filtration or other treatment.

• *Scale Pit:* An in-ground basin constructed of concrete for recovery of scale from process wastewaters used in hot forming and continuous casting operations.

• *Sludge Dewatering:* Gravity thickening is first accomplished in a tank equipped with a slowly rotating rake mechanism which breaks the bridge between sludge particles, thereby increasing settling and compaction. A sludge dewatering device such as a belt pressure filter, plate-and-frame pressure filter, or vacuum filter is then used to mechanically remove excess water from the sludge.

• *Tar/oil Removal:* Tar and oils are recovered from coke plant flushing liquor by gravity separation in a flushing liquor decanter and subsequent tar separation devices including storage tanks or filtration systems.

B. Methodology for Estimating Costs and Pollutant Reductions Achieved by Model Treatment Technologies

EPA estimated industry-wide compliance costs and pollutant reductions associated with today's proposed rule from data collected through survey responses, site visits, sampling episodes, data collected from state agencies, comments submitted during the stakeholder process, and computerized cost and pollutant loadings models developed for each of the technology options considered. EPA calculated facility specific compliance costs and pollutant reductions for facilities in the Cokemaking, Ironmaking, Steelmaking, and Integrated and Stand Alone Hot Forming Subcategories. For all other subcategories, EPA used statistically calculated survey weights to develop national estimates of these results.

EPA evaluated wastewater treatment technology performance for each survey respondent using effluent data provided in the Detailed and Short Form Surveys, effluent data collected from state agencies for sites that have made significant wastewater treatment modifications since 1997, and effluent data collected during Agency site visits and sampling episodes conducted from 1996 to 1999. EPA assumed that facilities whose current pollutant loadings exceeded the pollutant loadings associated with each technology option would incur costs as a result of compliance with that option. To determine the wastewater treatment upgrades or modifications necessary for each facility to achieve compliance, the Agency performed an analysis of wastewater treatment technology in place using data provided in the Detailed and Short Form Surveys and information collected during Agency site visits and sampling episodes conducted from 1996 through 1999. Based on this evaluation, EPA developed a computerized design and cost model to estimate the following capital costs and one-time consulting fees for each technology option under consideration.

• Major equipment: purchased equipment costs, including freight.

• Installation: mechanical equipment installation, piping installation, civil/structural (site preparation/grading, foundations, etc.), and electrical and process control.

• Indirect costs: costs for temporary facilities, spare parts, engineering procurement and contract management and other costs.

• Contingency: additional costs included in estimate to account for unforeseen items in vendor and/or contractor estimates.

• Consultant costs: single-occurrence costs associated with hiring an outside consultant to upgrade wastewater treatment system performance (*e.g.,* improve operating and maintenance to optimize biological treatment system performance).

EPA developed major equipment costs using data from the Cost Survey and vendor quotes. An engineering and design firm that has performed wastewater treatment installations for the iron and steel industry estimated indirect costs, installation, and contingency. Based on Cost Survey data and the estimates provided by the engineering and design firm, the Agency estimated installation costs separately for each technology option; indirect costs were assumed to be 28% of total direct costs; contingency costs were assumed to be 20% of total direct and indirect costs. EPA used engineering judgment to estimate consultant costs, based on its review of consultant costs.

The Agency also designed the cost model to estimate incremental operating and maintenance costs associated with the following cost items:

• Labor (operating and maintenance)

• Maintenance (materials and vendors)

• Chemical costs

• Energy costs

• Steam costs

• Sludge/residuals (hazardous/nonhazardous) disposal costs

• Oil disposal costs

• Sampling/monitoring costs

EPA developed incremental operating and maintenance costs using data provided in the Detailed and Short Form Surveys, Perry's Chemical Engineers Handbook—Sixth Edition, U.S. Department of Energy—Average Industrial Electrical Costs in 1998, the 1998 Bureau of Labor Statistics, and the 1997 Chemical Market Reporter.

EPA evaluated the hydraulic capacity of the process water treatment and recycle systems. Where the system was found to be capable of recirculating the incremental flow necessary to achieve the model BAT discharge flow, EPA assigned no investment cost for new equipment in the main treatment and recycle circuit. In most instances, the increase in recycle rate was only a few percent of the total recirculating flow

rate. For these cases, EPA assigned a one-time cost of $50,000 for consultant and mill services to conduct an evaluation of the treatment and recycle system and to modify water management practices and operations to achieve the model BAT discharge flow rate.

For those mills described above where one-time costs were assigned to achieve the model BAT discharge flow rate for the main process water treatment and recirculation circuit, incremental operation and maintenance costs were not assigned. The Agency assumed the increased costs associated with modifying the recycle rate (power costs) would be minimal and offset by likely savings in recirculating process water chemical treatment.

EPA requests that interested stakeholders comment on this costing approach and offer suggestions for improvements.

To determine the pollutant loading reduction associated with process and treatment upgrades, EPA estimated the baseline load and the post-compliance load expected from sites after treatment improvements and process changes associated with each technology option. The post-compliance reduction in pollutant mass is attributable to both improved treatment and process changes, most notably high-rate recycle for several subcategories. Improved treatment resulted in lower concentrations for some pollutants. EPA estimated that sites with high-rate recycle have a lower discharge flow and a subsequent lower pollutant mass discharged. EPA calculated the pollutant loading reduction as the difference between the estimated baseline load and the post-compliance load for each technology option. All pounds reported below are annual estimates.

EPA compared production normalized flows, as described in Section IV.F, with the facilities' actual process wastewater flow rates to determine what level of additional treatment facilities would have to add to achieve the level of pollution control described in the technology options (*e.g.*, through reducing flow rates). This was especially important when a component of the technology option was high rate recycle. In this way a facility's flow rate had a direct impact on both the expected cost to the facility and on the pollutant removal EPA estimated for the facility.

Information on EPA's compliance cost and pollutant loading estimates and methodologies, including the cost curves for all treatment technologies considered as the basis for today's proposed rule, is located in the public record. Some of the information EPA used to estimate compliance costs and pollutant loadings was claimed by survey recipients as CBI. This information is not in the public record. However, EPA provides in the public record a number of publicly available documents that set forth its methodology, assumptions and rationale for developing its cost estimates and that also present as much data as possible through the use of aggregations, summaries and other techniques to mask CBI. EPA encourages all interested parties to refer to the record and to provide comment on any aspect of the methodology or the data used to estimate compliance costs associated with today's proposal.

C. Technology Options, Regulatory Costs, and Pollutant Reductions

The Agency estimated the costs and pollutant loading reductions associated with iron and steel facilities to achieve compliance for each proposed technology option under consideration. This section summarizes the proposed technology options under consideration and the estimated costs and pollutant reductions associated with each option, by subcategory. For each option the capital cost, operating and maintenance costs, and other one-time costs are presented. See Section VI for a listing of total annualized costs by subcategory. All cost estimates in this section are expressed in terms of pre-tax 1997 dollars. Note that BPT technology options are discussed where applicable.

1. Cokemaking

a. *By-product cokemaking.* For the by-product cokemaking segment of this subcategory, EPA considered several different BAT, PSES, NSPS, and PSNS technologies.

EPA estimates that by-product cokemaking sites currently discharge approximately 2.3 million pounds of conventional pollutants (BOD, TSS, and O&G) directly. By-product cokemaking operations discharge approximately 2.7 million pounds of total priority and non-conventional pollutants directly and approximately 550,000 pounds indirectly.

Table V.C.1–1 presents the various options considered for by-product cokemaking, Table V.C.1–2 presents the associated costs, and Table V.C.1–3 presents the associated pollutant reduction estimates.

TABLE V.C.1.–1.—PROPOSED BY-PRODUCT COKEMAKING BAT/PSES TECHNOLOGY OPTIONS

Technology units	Treatment options							
	BAT–1	BAT–2	BAT–3	BAT–4	PSES–1	PSES–2	PSES–3	PSES–4
Tar/oil removal	X	X	X	X	X	X	X	X
Equalization/still feed tank	X	X	X	X	X	X	X	X
Free and fixed ammonia still	X	X	X	X	X	X	X	X
Heat exchanger	X	X	X	X			X	X
Cyanide precipitation		X				X		
Equalization tank	X	X	X	X			X	X
Biological treatment with secondary clarification	X	X	X	X			X	X
Sludge dewatering	X	X	X	X		X	X	X
Alkaline chlorination			X	X				X
Mixed-media filtration				X		X		
Granular activated carbon				X				

TABLE V.C.1–2.—COST OF IMPLEMENTATION FOR COKEMAKING

[In millions of pre-tax 1997 dollars]

	Treatment options							
	BAT–1	BAT–2	BAT–3	BAT–4	PSES–1	PSES–2	PSES–3	PSES–4
Number of mills	14	.....	.....	.....	8	.....	.....	.....
Capital costs	8.0	12.4	42.3	66.5	0	6.0	18.6	32.1
Annual O&M costs	0.1	3.0	7.2	14.9	0.3	1.8	3.3	5.8
One-time costs	0.3	0.3	0.3	0.3	0.2	0.2	0.2	0.2

TABLE V.C.1–3.—ESTIMATED POLLUTANT LOADING REDUCTION FOR COKEMAKING

[In million pounds/year]

	Treatment options							
	BAT–1	BAT–2	BAT–3	BAT–4	PSES–1	PSES–2	PSES–3	PSES–4
Incidental Removal of Conventional Pollutants (BOD, TSS, and O&G)	0.21	0.21	0.21	0.68	.....	.....	.....	.....
Removal of Priority and Non-conventional Pollutants	0.39	0.39	0.43	0.43	0.18	0.18	0.54	0.54

i. BAT

The technology option identified as BAT–1 consists of the same technologies and processes comprising the current BAT for by-product cokemaking, but with significant improvements in design and operation. Each of the other BAT options builds on this foundation. Under the first BAT option, water usage can be reduced by 1.6 million gallons per year from current levels and the rate of removing non-conventional pollutants can increase by 14% over those levels. The second BAT option results in no further reduction in flow beyond BAT–1 levels, but does result in the additional removal of 24% of the total cyanide from direct discharging cokemaking wastestreams through the use of cyanide precipitation. The third BAT option also results in no further reduction in flow beyond BAT–1 levels, but does result in the additional removal of 29% of the total cyanide (as well as additional removal of other pollutants) from direct discharging cokemaking wastestreams beyond BAT–1 levels through the use of alkaline chlorination. The fourth BAT option, which was included in the analysis as a potential means to achieve significant pollutant reduction, results in no further reduction in flow beyond that to be achieved by any of the BAT options, and does not lead to significant additional pollutant removal beyond that to be achieved by BAT–3.

EPA performed a preliminary assessment of including non-recovery cokemaking as a technology option for this segment. While this technology would result in a zero discharge of process wastewater and would reduce air emissions, the Agency did not consider it as an option for this segment for the following reasons:

—Non-recovery cokemaking has not reliably demonstrated the ability to produce foundry coke. Therefore, it is not an available technology for the segment as a whole.

—Non-recovery cokemaking processes preclude the production of coal by-products. Therefore, it is not an available technology for facilities in this segment that produce these by-products.

—Choosing non-recovery cokemaking processes as BAT to the exclusion of by-product processes would have significant adverse secondary economic effects on coal by-products markets and consuming industries. For example, the domestic coal tar refining industry, which consists of 5 companies with 13 facilities in 10 states as of 1997, is dependent upon the coke by-product production of crude coal tar as a feedstock.

—The estimated capital cost of replacing current cokemaking capacity with non-recovery coke plants is at least $3 billion. The estimate does not include full scale heat recovery for power generation and flue gas scrubbing. The estimated additional capital cost for heat recovery co-generation is at least $2.5 billion.

—The estimated operating costs are uncertain. The recently constructed non-recovery coke plant with associated heat recovery was the final coke plant to qualify for a federal alternative energy tax credit, which expired in June 1998. The presence of this tax credit clouds comparisons of operating costs between traditional by-product cokemaking and non-recovery cokemaking. Further, it is uncertain whether heat recovery co-generation is a necessary component of non-recovery cokemaking in the comparison of relative operating costs of by-product and non-recovery cokemaking.

—The economic viability of non-recovery cokemaking is impacted by site-specific factors, including land availability and local energy markets. For example, the local cost of electricity is a key determinant of the economic viability of heat recovery co-generation. Economic viability also depends on the presence of a large industrial energy user that would purchase electrical power and/or steam from co-generation. In cases where steel production and coke production are co-located, this condition is met; however, a number of existing coke plants are not co-located with steel production.

ii. PSES

Table V.C.1–1 shows the technical bases for the PSES options EPA examined. Except as noted, the technology basis for PSES–1 consists of the same technologies and processes comprising the current PSES for cokemaking with significant improvements in design and operation. This technology option would control the pollutants EPA has determined pass through. See Section IX. Unlike the current PSES model technology, however, PSES–1 does not include a dephenolizer. EPA collected information through its sampling program and technical surveys that shows that a dephenolizer is unnecessary to control the pollutants that EPA has determined pass through.

The technology basis for PSES–2 consists of PSES–1 plus cyanide precipitation, sludge dewatering, and mixed-media filtration. The technology basis for PSES–3 is identical to BAT–1. The technology basis for PSES–4 is identical to BAT–3.

The technology options for BAT and PSES are different because they are designed to control different parameters, based on EPA's pass-through analysis (see Section IX.A.2). For a discussion of the different technologies, refer to Section V.A.3.

Under PSES–1, water use can be reduced by 30% over the current levels, and the rate of removal of ammonia can increase by 62% over current levels. Under PSES–2, water use can be decreased by an additional 3.5% over that expected under PSES–1, and removal of cyanide can increase by 45% over that expected under PSES–1. Under PSES–3, the removal of ammonia can increase by 95% over that expected under PSES–2. Under PSES–4, there are virtually no additional removals.

iii. NSPS/PSNS

The technology options EPA considered for new sources are identical to those it considered for existing dischargers because no other treatment technologies are demonstrated. The Agency, however, did perform a preliminary assessment of non-recovery cokemaking as a technology option for NSPS for the by-product cokemaking segment but did not consider it as an option for the reasons discussed in the BAT section (Section V.C.1.a.i). Therefore, all technology options presented as BAT or PSES options also describe NSPS and PSNS options.

b. *Non-recovery cokemaking.* For the non-recovery cokemaking segment of this subcategory, EPA considered only one BPT, BAT, PSES, NSPS and PSNS technology option, i.e., the technology in place at the two sites currently using the non-recovery method for cokemaking. For a discussion of this technology, see Section 4 of the technical development document. The non-recovery cokemaking process results in zero discharge because the non-recovery cokemaking process does not generate process wastewater.

2. Ironmaking

This proposed subcategory encompasses two segments: sintering and blast furnace operations. The subcategory is segmented to take into account differences in the model treatment system flow rates used to develop the proposed effluent limitations guidelines and standards. However, EPA considered the same technologies for both segments (with the exception of cooling towers, which are not used for sinter operations). EPA did so because, where co-located, the wastewaters from both these processes are generally co-treated. BAT and PSES technologies would apply to either separate or combined treatment of wastewater from sintering and blast furnace operations. Technology options, costs, and pollutant loading reduction estimates for these two segments are presented on a combined basis below because of co-treatability of the wastewaters.

EPA estimated that Ironmaking operations discharge approximately 2.4 million pounds of conventional pollutants (TSS and O&G) directly. Ironmaking operations directly discharge approximately 5 million pounds of total priority and non-conventional pollutants. The Agency does not present results for indirect dischargers, because there is only one indirect discharger in this proposed subcategory and data aggregation or other masking techniques are insufficient to avoid disclosure of information claimed as confidential business information.

Table V.C.2–1 presents the options considered, Table V.C.2–2 presents the associated costs, and Table V.C.2–3 presents the associated pollutant reduction estimates.

a. Blast Furnaces. Some blast furnace operations achieve zero discharge by evaporating wastewater on slag. EPA does not advocate the practice of slag quenching with blast furnace wastewater because runoff from the process can lead to documented ground water contamination; therefore, the various treatment options do not include slag quenching. The Agency considered sites performing slag quenching to be zero discharge sites in the cost and pollutant reduction estimates because that practice, however undesirable, would allow them to achieve compliance with today's proposed effluent limitations guidelines and standards for the blast furnace segment.

b. Sintering. The source of pollutants in sinter wastewater is from the sinter plant's air pollution control system. Of the eight sinter plants operating in 1997, three have achieved zero discharge by using baghouses in place of wet air pollution control. The other five sinter plants generate wastewater as a result of wet air pollution control and therefore have installed treatment systems for that wastewater. The various components of typical treatment systems are identified in Table V.C.2–1. EPA considered whether to explore baghouses as a technology option, in place of wet air pollution controls, in an effort to achieve zero discharge. EPA concluded that the use of baghouses would not be a viable option because of significant retrofit costs and the potential for adverse non-water quality environmental impacts, which are discussed in detail in the iron and steel technical development document.

i. BAT

The technology option identified as BAT–1 consists of the same technologies and processes comprising the current BAT for ironmaking, but with significant improvements in design and operation. EPA intended to evaluate a second BAT option, building on this foundation by including granular activated carbon to the blowdown treatment. However, EPA did not pursue the option because all significant POCs in the effluent after application of BAT–1 system are projected to exist at levels too low to be further treated by this or any other add-on technology.

TABLE V.C.2–1.—IRONMAKING TECHNOLOGY OPTIONS

Treatment units	Technology options	
	BAT–1	PSES–1
Solids removal	X	X
Sludge dewatering	X	X
Cooling tower[1]	X	X
High-rate recycle	X	X
Blowdown treatment		
Metals precipitation	X	X
Alkaline chlorination	X	

TABLE V.C.2–1.—IRONMAKING TECHNOLOGY OPTIONS—Continued

Treatment units	Technology options	
	BAT–1	PSES–1
Mixed-media filtration	X	

[1] Applies to blast furnace process wastewater only

TABLE V.C.2–2.—COST OF IMPLEMENTING FOR IRONMAKING

[In millions of pre-tax 1997 dollars]

	Technology options (BAT–1 and PSES–1)
Number of mills	15
Capital costs	25.8
Annual O&M costs	2.7
One-time costs	0.7

Data aggregated to protect confidential business information.

TABLE V.C.2–3.—ESTIMATED POLLUTANT LOADING REDUCTION FOR IRONMAKING

[In million pounds/year]

	Technology options (BAT–1 and PSES–1)
Incidental Removal of Conventional Pollutants (TSS and O&G)	2.3
Removal of Priority and Non-Conventional Pollutants	3.5

Data aggregated to protect confidential business information.

Under BAT–1, water usage can be reduced by 5% from current levels, and total loadings of toxic and non-conventional pollutants can be reduced by 68%.

ii. PSES

The technology option identified as PSES–1 consists of the same technologies and processes comprising the current PSES for ironmaking, but with significant improvements in design and operation. This technology option would control the pollutants EPA has determined pass through. See Section IX. Unlike the current PSES model technology or BAT–1, however, PSES–1 does not include alkaline chlorination or mixed-media filtration. Data from EPA's iron and steel sampling program and survey responses indicated that alkaline chlorination and mixed-media filtration are unnecessary to control the pollutants that EPA has determined pass through.

iii. NSPS/PSNS

The technology options EPA considered for new sources are identical to those it considered for existing dischargers because no other treatment technologies are demonstrated. Therefore, all technology options presented in Table V.C.2–1 as BAT or PSES options also describe NSPS and PSNS options.

3. Integrated Steelmaking

EPA is not proposing to further segment this subcategory. EPA considered BAT and PSES technologies for treatment of wastewater for this subcategory. EPA estimates that integrated steelmaking operations directly discharge approximately 2.5 million pounds of conventional pollutants (TSS and (O&G) and approximately 6.2 million pounds of total priority and non-conventional pollutants. The Agency does not present results for indirect dischargers, because there is only one indirect discharger in this proposed subcategory and data aggregation or other masking techniques are insufficient to avoid disclosure of information claimed as confidential business information.

Table V.C.3–1 presents the options considered for integrated steelmaking, Table V.C.3–2 presents the associated costs, and Table V.C.3–3 presents the associated pollutant reduction estimates.

TABLE V.C.3–1.—INTEGRATED STEELMAKING TECHNOLOGY OPTIONS

Treatment units	Technology options	
	BAT–1	PSES–1
Solids removal with classifier and clarifier	X	X
Sludge dewatering	X	X
Cooling tower[1]	X	X
High-rate recycle	X	X
Blowdown treatment		
Metals precipitation	X	X

[1] Cooling tower is part of the treatment system where necessary and was costed accordingly.

TABLE V.C.3–2.—COST OF IMPLEMENTATION FOR INTEGRATED STEELMAKING

[In millions of pre-tax 1997 dollars]

	Technology options (BAT–1 and PSES–1)
Number of mills	21
Capital costs	16.8
Annual O&M costs	2.9
One-time costs	2.1

Data aggregated to protect confidential business information.

TABLE V.C.2–3.—ESTIMATED POLLUTANT LOADING REDUCTION FOR STEELMAKING

[In million pounds/year]

	Technology options (BAT-land PSES–1)
Incidental Removal of Conventional Pollutants (TSS and O&G)	19
Removal of Priority and Non-Conventional Pollutants	4.1

Data aggregated to protect confidential business information.

a. *BAT.* The technology option identified as BAT–1 consists of the same technologies and processes comprising the current BAT for steelmaking, but with significant improvements in design and operation. EPA intended to evaluate a second BAT option, building on this foundation by including mixed-media filtration to the blowdown treatment. However, EPA did not pursue the option because all significant POCs in the effluent after application of BAT–1 system are projected to exist at levels too low to be further treated by this or any other add-on technology.

Under the BAT–1, water usage can be reduced by 83% over current levels, and total loadings of toxic and non-conventional pollutants can be reduced by 66%. b.

b. *PSES.* The technology option identified as PSES–1 consists of the same technologies and processes comprising the current PSES for steelmaking (which is also the same technical basis as BAT–1), but with improvements to design and

performance. This technology option would control the pollutants EPA determined pass through. See Section IX.

c. *NSPS/PSES.* The technology options EPA considered for new sources are identical to those it considered for existing dischargers because no other treatment technologies are demonstrated. Therefore, all technology options presented in Table V.C.3–1 as BAT or PSES options also describe NSPS and PSNS options.

4. Integrated and Stand Alone Hot Forming

EPA proposes dividing this subcategory into two segments: carbon and alloy steels, and stainless steels. See Section IV.E above. The treatment options for the two segments are identical. For this proposed subcategory, EPA considered BAT and PSES technologies for treatment of wastewater from hot forming operations located at integrated and stand-alone facilities.

Table V.C.4.–1 presents the options considered for integrated and stand-alone hot forming, Table V.C.4–2 presents the associated costs, and Table V.C.4–3 presents the associated pollutant reduction estimates.

TABLE V.C.4–1.—INTEGRATED AND STAND-ALONE HOT FORMING TECHNOLOGY OPTIONS

Treatment units	Technology options	
	BAT–1	PSES–1
Carbon and Alloy Steels		
Scale pit with oil skimming	X	X
Roughing clarifier with oil removal	X	X
Sludge dewatering	X	X
Mixed-media filtration [1]	X	X
High-rate recycle	X	X
Blowdown treatment		
Mixed-media filtration [1]	X	X
Stainless Steels		
Scale pit with oil skimming	X	X
Roughing clarifier with oil removal	X	X
Sludge dewatering	X	X
Mixed-media filtration [1]	X	X
High-rate recycle	X	X
Blowdown treatment		
Mixed-media filtration [1]	X	X

[1] Mixed-media filtration of recycled flow or low-volume blowdown flow.

TABLE V.C.4–2.—COST OF IMPLEMENTATION FOR INTEGRATED AND STAND-ALONE HOT FORMING

[In millions of pre-tax 1997 dollars]

	Technology options	
	BAT–1	PSES–1
Carbon and Alloy Steels		
Number of mills	44	7
Capital costs	115.3	0.3
Annual O&M costs	16.1	0.1
Stainless Steels		
Number of mills	0	3
Capital costs	0	1.1
Annual O&M costs	0	0.2
One-time costs	0	0.1

TABLE V.C.4–3.—ESTIMATED POLLUTANT LOADING REDUCTION FOR INTEGRATED AND STAND-ALONE HOT FORMING

[In million pounds/year]

	Technology options	
	BAT–1	PSES–1
Carbon and Alloy Steels		
Incidental Removal of Conventional Pollutants (TSS and 22— O&G)	22	-
Removal of Priority and Non-Conventional Pollutants	5.2	0.02

TABLE V.C.4–3.—ESTIMATED POLLUTANT LOADING REDUCTION FOR INTEGRATED AND STAND-ALONE HOT FORMING—Continued

[In million pounds/year]

	Technology options	
	BAT–1	PSES–1
Stainless Steels		
Incidental Removal of Conventional Pollutants (TSS and 01— O&G)	[1] 0	-
Removal of Priority and Non-Conventional Pollutants	[1] 01	0.001

[1] No direct discharging stainless facilities exist in this subcategory.

a. *Carbon and Alloy Steels.* EPA estimates that carbon and alloy steel hot forming operations sites directly discharge approximately 26 million pounds of conventional pollutants (TSS and O&G). These operations also discharge directly approximately 12 million pounds of total priority and non-conventional pollutants and approximately 0.038 million pounds indirectly.

i. BAT

Currently, effluent limitations guidelines exists only at the BPT level. The technical basis of BPT is comprised of a scale pit with oil skimming, a roughing clarifier, sludge dewatering, and filtration. EPA analyzed BAT–1 using the current BPT as a base, but adding on high rate recycle and mixed-media filtration of blowdown. This BAT option resembles the technical basis of the current NSPS, but with improved design and operation in terms of reduced flows and pollutant concentration. EPA estimates that implementation of limitations based on BAT–1 will result in a flow reduction of 84% over current conditions, and a reduction of 43% of toxic and non-conventional pollutants.

ii. PSES

The technology option for PSES is identical to that for BAT–1. The technical basis of PSES–1 is comprised of a scale pit with oil skimming, a roughing clarifier, sludge dewatering, filtration, and high rate recycle, with mixed-media filtration of blowdown. This technology option would control the pollutants EPA determined pass through. See Section IX. EPA estimates that this would result in a flow reduction of 74% over current conditions, and a 53% reduction in discharge of toxic and non-conventional pollutants.

iii. NSPS/PSNS

The technology options EPA considered for new sources are identical to those it considered for existing dischargers because no other treatment technologies are demonstrated. Therefore, all technology options presented in Table V.C.4–1 as BAT or PSES options also describe NSPS and PSNS options.

b. *Stainless Steels.* Stainless steel integrated and stand-alone hot forming operations discharge indirectly approximately 5,000 pounds of total priority and non-conventional pollutants. No stainless steel hot forming sites discharge wastewater directly.

i. BAT

As stated above, there are no direct discharging stainless facilities in this subcategory, and therefore there are no anticipated pollutant reductions or costs associated with proposing options for BAT. However, EPA is proposing BAT for this segment in the event that a new stainless facility commences operation or if an indirect discharger changes its status to direct before EPA promulgates this rule. Any such dischargers would be subject to BAT (not NSPS) because under 306(b) and EPA's implementing regulations a source is a "new source" subject to NSPS only if it commences construction after the promulgation of the final rule in April 2002.

As with the Carbon and Alloy segment, the technology basis of BAT–1 for the Stainless segment consists of a scale pit with oil skimming, a roughing clarifier, sludge dewatering, filtration, and high rate recycle, with mixed-media filtration of blowdown. This BAT option resembles the technology basis of the current NSPS for integrated steelmaking and stand-alone hot forming, but with improved design and operation in terms of reduced flows and pollutant concentration. In addition to BAT–1, EPA intended to analyze a second BAT option, BAT–1 plus metals precipitation of the blowdown, for this segment. However, EPA did not fully develop the costing information for this option because data indicated that adding on metals precipitation for this type of wastestream would not result in additional pollutant loadings removals in systems with well-operated BAT–1 technology in place.

ii. PSES

The PSES–1 option is the same as the BAT–1 option described above. This technology option would control the pollutants EPA determined pass through. See Section IX. EPA estimates that PSES–1 would result in a reduction of 90% of the flow from current levels, and a 66% removal of toxic and non-conventional pollutants.

iii. NSPS/PSNS

The technology options EPA considered for new sources are identical to those it considered for existing dischargers because no other treatment technologies are demonstrated. Therefore, all technology options presented in Table V.C.4–1 as BAT or PSES options also describe NSPS and PSNS options.

5. Non-Integrated Steelmaking and Hot Forming

For this proposed subcategory, EPA considered BAT and PSES technologies for two segments: Carbon and Alloy Steels, and Stainless Steels. The treatment options for the two segments are identical except for the addition of metals precipitation of blowdown for the proposed Stainless Steels segment as BAT–2. Table V.C.5–1 presents the various options considered for non-integrated steelmaking and hot forming, Table V.C.5–2 presents the associated costs, and Table V.C.5–3 presents the associated pollutant reduction estimates.

TABLE V.C.5–1 NON-INTEGRATED STEELMAKING TECHNOLOGY OPTIONS

Treatment unit	Technology options	
	BAT–1	PSES–1
Carbon & Alloy Steels		
Solids removal with clarifier	X	X
Cooling tower [1]	X	X
Mixed-media filtration [2]	X	X
Sludge dewatering	X	X
High-rate recycle	X	X
Blowdown treatment:		
Mixed-media filtration [2]	X	X

[1] Cooling tower is part of the treatment system where necessary and was costed accordingly
[2] Mixed-media filtration of recycled flow or low-volume blowdown flow of hot forming wastewater

Treatment unit	Technology options		
	BAT–1	BAT–2	PSES–1
Stainless Steels			
Solids removal with clarifier	X	X	X
Cooling tower [1]	X	X	X
Mixed-media filtration [2]	X	X	X
Sludge dewatering	X	X	X
High-rate recycle	X	X	X
Blowdown treatment:			
Metals precipitation	.....	X	.....
Mixed-media filtration [2]	X	X	X

[1] Cooling tower is part of the treatment system where necessary and was costed accordingly
[2] Mixed-media filtration of recycled flow or low-volume blowdown flow of hot forming wastewater

TABLE V.C.5–2 COST OF IMPLEMENTATION FOR NON-INTEGRATED STEELMAKING AND HOT FORMING

[In millions of pre-tax 1997 dollars]

	Technology options	
	BAT–1	PSES–1
Carbon & Alloy Steels		
Number of mills	39	15
Capital costs	18.9	2.5
Annual O&M costs	2.0	0.4
One-time costs	3.9	0.8

	Technology options		
	BAT–1	BAT–2	PSES–1
Stainless Steels			
Number of mills	4	4	4
Capital costs	0.4	3.7	0
Annual O&M costs	0.1	0.6	0
One-time costs	0.2	0.2	0.4

TABLE V.C.5–3 ESTIMATED POLLUTANT LOADING REDUCTION FOR NON-INTEGRATED STEELMAKING AND HOT FORMING

[In million pounds/year]

	Technology options	
	BAT–1	PSES–1
Carbon & Alloy Steels		
Incidental Removal of Conventional Pollutants (TSS andO&G)	2.6	.....
Priority and Non-Conventional Pollutants	0.34	0.001

	Technology options		
	BAT–1	BAT–2	PSES–1
Stainless Steels			
Incidental Removal of Conventional Pollutants (TSS and O&G)	0.10	0.10	—
Priority and Non-Conventional Pollutants	0.018	0.018	0.012

a. *Carbon and Alloy Steels.* EPA estimated that carbon and alloy steel operations directly discharge approximately 0.18 million pounds of conventional pollutants (TSS and O&G). These operations also discharge approximately 53,000 pounds of total toxic and non-conventional pollutants directly and approximately 14,000 pounds indirectly.

i. BAT

The technology option identified as BAT–1 consists of the same technologies and processes comprising the current BAT for non-integrated steelmaking, but with significant improvements in design and operation resulting in lower flow and reduced discharge of pollutants of concern. EPA also investigated zero discharge as the basis for BAT because some facilities do achieve zero discharge. However, EPA believes it is not feasible for the segment as a whole or any identifiable subsegment to achieve zero discharge because of site-specific circumstances, most significantly the ability to manage effectively process area storm water. Accordingly, the investment cost to retrofit zero discharge at such sites is likely to be too high to be economically achievable for the segment as a whole.

EPA estimates that the BAT–1 technology would result in a reduction of 90% of flow and a 72% reduction in the discharge of toxic and non-conventional pollutants.

ii. PSES

The technology basis for PSES–1 is the same as described as BAT–1. The technological basis for PSES–1 is solids removal, a cooling tower, mixed-media filtration, sludge dewatering, high-rate recycle, and mixed-media filtration of blowdown. This technology option would control the pollutants EPA determined pass through. See Section IX. EPA concludes that all existing indirect discharging facilities in this segment have the equipment in place to achieve this level of performance, and would also not incur additional operating and maintenance costs. See Section V.B for discussion of why EPA concludes that facilities can achieve pollutant reduction without incurring capital or O&M costs. EPA has included in its estimate of costs a one-time fee for facilities to ascertain the changes in water management needed, and to implement them.

EPA estimates that the PSES–1 technology would result in a reduction of flow of 32%, and the reduction in the discharge of toxic and non-conventional pollutants by 33%.

iii. NSPS/PSNS

For NSPS/PSNS in the Carbon & Alloy segment of the Non-Integrated Steelmaking and Hot Forming subcategory, EPA identifies process water and water pollution control technologies that would result in zero discharge. The model NSPS/PSNS technologies consist of treatment and high-rate recycle systems, management of process area storm water, and disposal of low-volume blowdown streams by evaporation through controlled application on electric furnace slag, direct cooling of electrodes in electric furnaces, and other evaporative uses. Operators of 24 existing non-integrated steel mills (in the subcategory as a whole) have reported zero discharge of process wastewater. These facilities are located in various states and produce various products such as bars, beams, billets, flats, plate, rail, rebar, rod, sheet, slabs, small structurals, strip, and specialty sections. EPA has determined that new facilities can easily incorporate new process water treatment and water pollution control at the design stage, thus providing avoiding costs associated with retrofit situations. Consequently, the Agency has identified zero discharge as an appropriate NSPS/PSNS for non-integrated steelmaking and hot forming operations located in any area of the United States and producing any product.

b. *Stainless Steels.* Stainless steel operations discharge directly approximately 180,000 pounds of total conventional pollutants (TSS and O&G). Stainless steel operations discharge approximately 53,000 pounds of total priority and non-conventional pollutants directly and approximately 14,000 pounds indirectly.

i. BAT

With one exception, the technology option identified as BAT–1 consists of the same technologies and processes comprising the current BAT for integrated steelmaking but with significant improvements in design and operation. Unlike the current BAT, however, BAT–1 does not have metals precipitation. In addition to BAT–1, EPA analyzed a second BAT option, BAT–2, which consists of the BAT–1 technology but with metals precipitation. Although metals precipitation of blowdown is part of both the current BAT and BAT–2, EPA's data indicated no additional decrease in pollutant loadings as a result of metals precipitation. EPA also investigated zero discharge as the basis for BAT because some facilities do achieve zero discharge. However, EPA believes it is not feasible for the segment as a whole or any identifiable subsegment to achieve zero discharge because of site-

specific circumstances, most significantly the ability to manage effectively process area storm water. Accordingly, the investment cost to retrofit zero discharge at such sites is likely too high to be economically achievable for the segment as a whole.

EPA estimates that selection of the BAT–1 option as the technology basis would result in the reduction of flow by this segment of the non-integrated steelmaking and hot forming subcategory by 52%, and the reduction in the discharge of toxic and non-conventional pollutants by 34%.

ii. PSES

The current technological basis for PSES is solids removal, a cooling tower, mixed-media filtration, sludge dewatering, high-rate recycle, and metals precipitation of blowdown. The technical basis for PSES–1 is the same as described as BAT–1. This technology option would control the pollutants EPA determined pass through. See Section IX.

EPA estimates that the PSES–1 technology would result in a reduction of flow of 89%, and the reduction in the discharge of toxic and non-conventional pollutants by 86%.

iii. NSPS/PSNS

Like the Carbon and Alloy segment, EPA identifies technologies that result in zero discharge as NSPS/PSNS for the Stainless segment of the Non-Integrated Steelmaking and Hot Forming subcategory. See discussion under Section V.C.5.a.iii above. The Agency has identified zero discharge as an appropriate NSPS for non-integrated steelmaking and hot forming operations located in any area of the United States and producing any product.

6. Steel Finishing

For the proposed Steel Finishing subcategory, EPA considered BAT and PSES technologies for the Carbon and Alloy segment, and Stainless segment. The treatment options for the two segments are identical except for the addition of acid purification units for the proposed stainless steels segment. Table V.C.6–1 presents the options considered for steel finishing, Table V.C.6–2 presents the associated costs, and Table V.C.6–3 presents the associated pollutant reduction estimates.

TABLE V.C.6–1 STEEL FINISHING TECHNOLOGY OPTIONS

Treatment units	Technology options	
	BAT–1	PSES–1
Carbon and Alloy Steels		
In-Process Controls:		
Countercurrent rinses	X	X
Recycle of fume scrubber water	X	X
Wastewater Treatment:		
Diversion tank	X	X
Oil/water separation	X	X
Equalization	X	X
Hexavalent chromium reduction [1]	X	X
Multiple-stage pH control for metals precipitation	X	X
Clarification	X	X
Sludge dewatering	X	X

[1] For sites with hexavalent chromium-bearing wastewater.

Treatment units	Technology options	
	BAT–1	PSES–1
Stainless Steels		
In-Process Controls:		
Countercurrent rinsesX	X	
Recycle of fume scrubber water	X	X
Acid purification units [1]	X	X
Wastewater Treatment:		
Diversion tank	X	X
Oil/water separation	X	X
Equalization	X	X
Hexavalent chromium reduction [2]	X	X
Multiple-stage pH control for metals precipitation	X	X
Clarification	X	X
Sludge dewatering	X	X

[1] Applies to sites with sulfuric and nitric/hydrofluoric acid baths for stainless products.
[2] For sites with hexavalent chromium-bearing wastewater.

TABLE V.C.6–2 COST OF IMPLEMENTATION FOR STEEL FINISHING

[in millions of pre-tax 1997 dollars]

	Technology options	
	BAT–1	PSES–1
Carbon and Alloy Steels		
Number of mills	51	31
Capital costs	16.0	6.0
Annual O&M costs	2.5	1.2
One-time costs	1.6	0.8

	Technology options	
	BAT–1	PSES–1
Stainless Steels		
Number of mills	18	14
Capital costs	16.4	4.0
Annual O&M costs	(1.1)	0.2
One-time costs	0.8	0.4

( ) denotes cost savings due to acid purification.

TABLE V.C.6–3 ESTIMATED POLLUTANT LOADING REDUCTION FOR STEEL FINISHING

[in million pounds/year]

	Technology options	
	BAT–1	PSES–1
Carbon Steels		
Incidental Removal of Conventional Pollutants (TSS and O&G)	2.8	.....
Removal of Non-Conventionals	0.24	0.0017

	Technology options	
	BAT–1	PSES–1
Stainless Steels		
Incidental Removal of Conventional Pollutants (TSS and O&G)	0.72	.....
Removal of Non-Conventionals	14	0.031

a. *Carbon and Alloy Steels.* EPA estimated that carbon and alloy steel operations directly discharge approximately 4.6 million pounds of conventional pollutants (TSS and O&G). Carbon and alloy steel operations discharge approximately 1.7 million pounds of total priority and non-conventional pollutants directly and approximately 0.017 million pounds indirectly.

i. BAT

The technical basis of the current BAT limitations consists of recycle of fume scrubber water, a diversion tank, oil/water separation, equalization, hexavalent chrome reduction (where applicable), metals precipitation, clarification, and sludge dewatering. The technical basis for BAT–1 is the same as that for the existing BAT limitations, but with the addition of counter-current rinsing. BAT–1 also reflects significant improvements in design and operation that have occurred in the industry, which result in lower flow and reduced discharge of pollutants of concerns. EPA intended to evaluate a second BAT option, building on this foundation by including mixed-media filtration. However, EPA did not pursue the option because all significant POCs in the effluent after application of BAT–1 system are projected to exist at levels too low to be further treated by this or any other add-on technology. EPA considered zero discharge of regulated pollutants as a third BAT option, since certain facilities have demonstrated the ability to achieve zero discharge. These facilities generally have low production rates and are achieving zero discharge by off-site disposal of a small quantity of wastewater. EPA's data indicates that zero discharge would not be economically achievable for low production facilities as a whole, since availability of affordable off-site hauling and disposal may not be certain, and therefore proposes not to further subcategorize this segment. Zero discharge through off-site disposal would also be cost prohibitive for larger facilities.

EPA estimates that, under BAT–1, flow from the Carbon and Alloy segment of the Steel Finishing subcategory would decrease by 59%, and the amount of toxic and non-conventional pollutants discharged would decrease by 14%.

ii. PSES

The technology basis for the current PSES for steel finishing is the same as that for the current BAT. The PSES–1 technology is the same as the BAT–1 technology. This technology option would control the pollutants EPA determined pass through. See Section IX. EPA estimates that, under PSES–1, flow from this segment of the Steel Finishing subcategory would decrease by 30%, and the amount of toxic and non-conventional pollutants discharged would decrease by 10%.

iii. NSPS/PSNS

The technology options EPA considered for new sources are identical to those it considered for existing dischargers because no other treatment technologies are demonstrated (since availability of affordable off-site hauling and disposal may not be certain.) Therefore, all technology options presented in Table V.C.6–1 as BAT or PSES options also describe NSPS and PSNS options.

b. *Stainless Steels.* Stainless steel operations discharge directly approximately 1.2 million pounds of total conventional pollutants (TSS and O&G). Stainless steel operations discharge directly approximately 31 million pounds of total priority and non-conventional pollutants and approximately 0.31 million pounds indirectly.

i. BAT

Like the Carbon & Alloy segment of the Steel Finishing subcategory, the technology basis of the BAT limitations currently applicable to Stainless Steel mills consists of recycle of fume scrubber water, a diversion tank, oil/water separation, equalization, hexavalent chrome reduction (where applicable), metals precipitation, clarification, and sludge dewatering. The technical basis for BAT–1 of the Stainless segment is the same as that for the current BAT limitations, but with the addition of counter-current rinsing and acid purification units. BAT–1 also reflects significant improvements in design and operation that have occurred in the industry, which result in lower flow and reduced discharge of pollutants of concern. EPA intended to evaluate a second BAT option, building on this foundation by including mixed-media filtration. However, EPA did not pursue the option because all significant POCs in the effluent after application of BAT–1 system are projected to exist at levels too low to be further treated by this or any other add-on technology. EPA considered zero discharge of regulated pollutants as a third BAT option, since certain facilities have demonstrated the ability to achieve zero discharge. EPA's data indicates that zero discharge would not be economically achievable for low production facilities as a whole, since availability of affordable off-site hauling and disposal may not be certain, and therefore proposes not to further subcategorize this segment. Zero discharge through off-site disposal would be cost prohibitive for larger facilities.

EPA estimates that, under BAT–1, flow from this segment of the Steel Finishing subcategory would decrease by 47%, and the amount of toxic and non-conventional pollutants discharged would decrease by 45%. EPA did not perform a detailed pollutant removal or costing analysis for BAT–2 because data indicated that mixed-media filtration achieved no projected pollutant reduction beyond that seen at well-operated facilities with BAT–1.

ii. PSES

The technology basis for the current PSES for steel finishing is the same as that for the current BAT. The PSES–1 technology is the same as the BAT–1 technology. This technology option would control the pollutants EPA determined pass through. See Section IX. EPA estimates that, under PSES–1, flow from the stainless segment of the Steel Finishing subcategory would decrease by 23%, and the amount of toxic and non-conventional pollutants discharged would decrease by 10%.

iii. NSPS/PSNS

The technology options EPA considered for new sources are identical to those it considered for existing dischargers because no other treatment technologies are demonstrated. EPA's data indicates that zero discharge would not be economically achievable for low production facilities as a whole, since availability of affordable off-site hauling and disposal may not be certain. Zero discharge through off-site disposal would be cost prohibitive for larger facilities. Therefore, all technology options presented in Table V.C.6–1 as BAT or PSES options also describe NSPS and PSNS options.

7. Other Operations

The Agency considered BPT and PSES technologies for treatment of wastewater from three segments of this subcategory: Briquetting, Direct-reduced ironmaking (DRI), and Forging operations. There are no existing BPT limitations for these operations.

a. *Briquetting.* Briquetting facilities do not generate process wastewater; therefore, BPT, PSES, PSNS, and NSPS technology options for briquetting are those that result in zero discharge.

b. *DRI.* EPA identified one option for this segment, BPT/BCT–1, which consists of solids removal, clarifier, and high rate recycle with filtration for blowdown wastewater. EPA did not identify a separate BCT technology because nothing more advanced that the BPT technology was cost-reasonable as required by statute. The Agency did not identify BAT limits since the only POCs for the DRI segment are conventionals. Table V.C.7–1 presents the option considered for DRI, Table V.C.7–2 presents the associated costs, and Table V.C.7–3 presents the associated pollutant reduction estimates. The Agency does not present pollutant removal or costing results for DRI facilities, because there are only two mills in this segment and data aggregation or other masking techniques are insufficient to avoid disclosure of information claimed as confidential business information.

TABLE V.C.7–1 DIRECT-REDUCED IRONMAKING BPT/BCT TECHNOLOGY OPTIONS

Treatment units	Technology options
	BPT/BCT
Solids removal with classifier and clarifier	X
Cooling tower	X
Sludge dewatering	X
High-rate recycle	X
Blowdown treatment:	
Mixed-media filtration	X

TABLE V.C.7–2 COST OF IMPLEMENTATION FOR DIRECT-REDUCED IRONMAKING

	Technology option
	BPT
Number of mills	2
Capital costs	*
Annual O&M costs	*
One-time costs	*

*Data aggregation or other masking techniques are insufficient to protect confidential business information.

TABLE V.C.7–3 ESTIMATED POLLUTANT LOADING REDUCTION FOR DIRECT-REDUCED IRONMAKING

[In pounds/year]

	Technology options
	BPT
Total Conventionals (TSS and O&G as HEM)	*
Reduction of Priority and Non-Conventional Pollutants	*

*Data aggregation or other masking techniques are insufficient to protect confidential business information.

c. *Forging.* For forging operations, EPA estimated that sites discharge approximately 1,100 pounds of O&G directly. EPA identified one option for this segment, BPT/BCT, which is an oil/water separator. EPA did not identify a separate BCT technology because nothing more advanced that the BPT technology was cost-reasonable as required by statute. The Agency did not identify BAT limits since the only POCs for the forging segment are conventionals. Table V.C.7–4 presents the option considered for forging, Table V.C.7–5 presents the associated costs, and Table V.C.7–6 presents the associated pollutant reduction estimates.

i. BPT/BCT

EPA estimates that there will be a reduction of O&G of 40% from direct discharging forging operations as a result of implementation of this BPT/BCT option. See Section V.B for discussion of why EPA concludes that facilities can achieve pollutant reduction without incurring capital or O&M costs.

ii. PSES

EPA is not proposing PSES for the forging segment because EPA determined that pollutants present in forging wastewaters do not pass through.

iii. NSPS/PSNS

Since no other treatment technologies have been demonstrated, EPA identifies the same technology basis for NSPS as would be used for BPT. EPA is not identifying PSNS because EPA determined that pollutants present in forging wastewaters do not pass through.

TABLE V.C.7–4 FORGING TECHNOLOGY OPTIONS

Treatment units	Technology options
	BPT/BCT
High-rate recycle	X
Blowdown treatment:	
Oil/water separator	X

TABLE V.C.7–5 COST OF IMPLEMENTATION FOR FORGING

	Technology options
	BPT/BCT
Number of mills	8
Capital costs	0
Annual O&M costs	0
One-time costs	0.1

TABLE V.C.7–6 ESTIMATED POLLUTANT LOADING REDUCTION FOR FORGING

[in pounds/year]

	Technology options
	BPT/BCT
Total Conventionals (O&G as HEM)	440
Reduction of Priority and Non-Conventional Pollutants	0

VI. Economic Analysis

A. Introduction and Overview

This section describes the capital investment and annualized costs of compliance with the proposed effluent limitations guidelines and standards for the iron and steel industry and the potential impacts of these compliance costs on the industry. EPA's economic assessment is presented in detail in the report titled "Economic Analysis of the Proposed Effluent Limitations Guidelines and Standards for Iron and Steel Manufacturing" (hereafter "EA") and in the rulemaking record. The EA estimates the economic effect of compliance costs on subcategory operations at a site, the combined cost for all subcategory operations at a site for selected cost combinations, aggregate costs for all sites owned by each company, impacts on employment and output, domestic and international markets, and environmental justice issues. EPA also conducted a small business analysis, which estimates effects on small entities, and a cost-effectiveness analysis of all evaluated options.

B. Economic Description of the Iron and Steel Industry and Baseline Conditions

The United States is the third largest steel producer in the world with 12 percent of the market, an annual output of approximately 105 million tons per year, and nearly 145,000 employees. Major markets for steel are service centers and the automotive and construction industries. A service center is an operation that buys finished steel, processes it in some way, and then sells it. Together these three markets account for about 58 percent of steel shipments. The remaining 42 percent is dispersed over a wide range of products and activities, such as agricultural, industrial, and electrical machinery; cans and barrels; and appliances. The building of ships, aircraft, and railways and other forms of transport is included in this group as well.

The iron and steel rulemaking includes sites within the North American Industry Classification System (NAICS) codes 324199 (coke ovens, now part of "All other petroleum and coal product manufacturing"), 331111 (iron and steel mills), 331210 (steel pipes and tubes), and 331221 (cold finishing of steel shapes). The iron and steel and metal products and machinery effluent guideline rulemakings both may have sites in the last two NAICS codes. Section III.C describes the dividing line between sites with iron and steel operations and sites with metal products and machinery operations.

The iron and steel effluent guideline would apply to approximately 254 iron and steel sites. Of these 254 sites, approximately 216 can be analyzed for post-regulatory compliance impacts at the site level. the remaining 38 sites, 13 did not report data at the site level, and 15 could not be analyzed due to being jointly owned sites or foreign owned sites or newly constructed sites, and 10 were in poor financial health prior to the regulation and are treated as closures under the prevailing baseline conditions. Approximately 60 sites are owned by small business entities.

The 254 sites are owned by 115 companies, as estimated by the EPA survey. The global nature of the industry is illustrated by the fact that 18 companies have foreign ownership. Twelve other companies are joint entities with at least one U.S. company partner. Excluding joint entities and foreign ownership, the data base contains 85 U.S. companies, more than half of which are privately owned. Responses to the EPA survey are the only sources of financial information for these privately-held firms.

The EPA survey collected financial data for the 1995–1997 time period (the most recent data available at the time of the survey). This three-year time frame marks a period of high exports (six to eight million tons per year). This high point in the business cycle allowed companies to replenish retained earnings, retire debt, and take other steps to reflect this prosperity in their financial statements. Even so, an initial analysis of the pre-regulatory condition of 115 companies in the EPA survey indicated that 27 of them would be considered "financially distressed" for reasons ranging from start-up companies and joint ventures to established firms that still showed losses.

The financial situation changed dramatically between 1997 and 1998 due to the Asian financial crisis and slow economic growth in Eastern Europe. The following analysis of economic conditions occurring after the 1995–1997 time frame is based upon sources such as trade journal reports, Securities and Exchange Commission (SEC) filings, and trade case filings with the U.S. Department of Commerce and the U.S. International Trade Commission (ITC).

When these countries' currencies fell in value, their steel products fell in price relative to U.S. producers. While the U.S. is and has been the world's largest steel importer (and a net importer for the last two decades), the U.S. was nearly the only viable steel market to which other countries could export during 1998. U.S. imports jumped by 13.3 million tons from 41 million to 54.3 million tons—a 32 percent increase—from 1997 to 1998. About one out of every four tons of steel consumed in 1998 was imported. At least partly due to increased competition from foreign steel mills, the financial health of the domestic iron and steel industry also experienced a steep decline after 1997. This decline is not reflected in the survey responses to the questionnaire, which covered the years 1995 through 1997 and which were the most recent data available at the time the questionnaire was administered in 1998. Based upon publically available sources, EPA learned that, after 1997, at least four companies went into Chapter 11 bankruptcy while at least four additional companies merged with healthier ones.

The flood of imports affected the industry disproportionately. Integrated steelmakers manufacture semi-finished and intermediate products, such as slabs and hot rolled sheet, as well as finished products, such as cold rolled sheet and plate. Integrated steelmakers were hurt most severely during 1998, as imports increased dramatically across most of their product line (for example, slabs, hot rolled sheet and strip, plate, and cold rolled sheet and strip). Mini-mills suffered as well, albeit to a lesser extent financially. The low-priced imports, however, benefitted some companies that purchase semi-finished and intermediate products for further processing.

The industry filed numerous countervailing duty and antidumping cases with the U.S. Department of Commerce and the U.S. ITC charging various countries (for example, Japan, Russia, Brazil) with unfair trade practices concerning carbon and stainless steel products. The ITC found for the U.S. industry in some cases (for example, hot rolled carbon sheet, carbon plate, stainless plate) meaning that it determined that the domestic industry was materially injured or threatened with material injury by the imports. In the case of Russia, the threat of trade remedies was sufficient to have Russia agree to voluntarily limit exports of a variety of steel products to the U.S.

The Clinton administration launched an initiative to address the economic concerns of the steel industry in 1999. The Steel Action Plan includes initiatives focused on eliminating unfair trade practices that support excess capacity, enhanced trade monitoring and assessment, and maintenance of strong trade laws. Further in a separate action on August 17, 1999, President Clinton signed into law an act providing authority for guarantees of loans to qualified steel companies. The Emergency Steel Loan Guarantee Act of 1999 (Pub. L. 106–51) established the Emergency Steel Guarantee Loan Program (13 CFR part 400) for guaranteeing loans made by private sector lending institutions to qualified steel companies. The Program will provide guarantees for up to $1 billion in loans to qualified steel companies. These loans will be made by private sector lenders, with the Federal Government providing a guarantee for up to 85 percent of the amount of the principal of the loan. A qualified steel company is defined in the Act to mean: any company that is incorporated under the laws of any state, is engaged in the production and manufacture of a product defined by the American Iron and Steel Institute as a basic steel mill product, and has experienced layoffs, production losses, or financial losses since January 1998 or that operates substantial assets of a company that meets these qualifications. Certain determinations must be made in order to guarantee a loan, including that credit is not otherwise available to a qualified steel company under reasonable terms or conditions sufficient to meet its financing needs, that the prospective earning power of the qualified company together with the character and value of the security pledged must furnish reasonable assurance of repayment of the loan to be guaranteed, and that the loan must bear interest at a reasonable rate. All loans guaranteed under this Program must be paid in full not later than December 31, 2005 and the aggregate amount of loans guaranteed with respect to a single qualified steel company may not exceed $250 million. According to a March 1, 2000 press release from U.S. Department of Commerce, thirteen companies have applied for loan guarantees totaling $ 901 million.

C. Economic Impact Methodology

1. Introduction

This section (and, in more detail, the EA and record for the proposed rule) evaluates several measures of economic impacts that result from the estimated compliance costs. The analysis in the EA consists of nine major components: (1) An assessment of the number of facilities that could be affected by this rule; (2) an estimate of the annualized aggregate cost for these facilities to comply with the rule using site-level capital, one-time non-capital, and annual operating and maintenance (O&M) costs; (3 and 4) two separate site-level closure analyses to evaluate the impacts of compliance costs for operations in individual subcategories at the site and for the combined cost of the options for all subcategories at the site; (5) an evaluation of the corporate financial distress incurred by the companies in the industry as a result of combined compliance costs for all sites owned by the company; (6) an industry-wide market analysis of the impacts of the compliance costs; (7) an evaluation of secondary impacts such as those on employment and economic output; (8) an analysis of the effects of compliance costs on small entities; and (9) a cost-benefit analysis pursuant to E.O. 12866.

All costs are reported in this section of the preamble in 1999 dollars, with the exception of cost-effectiveness results, which, by convention, are reported in 1981 dollars. The primary source of data for the economic analysis is the Collection of 1997 Iron and Steel Industry Data (Section 308 Survey). Other sources include government data from the Bureau of the Census, industry trade journals, and EPA's Development Document for this rulemaking.

2. Methodology Overview

The starting point for the economic analysis is the cost annualization model, which uses site-specific cost data and other inputs to determine the annualized capital, one-time non-capital, and O&M costs of improved wastewater treatment. This model uses these costs along with the company-specific real cost of capital (discount rate) and corporate tax rate over a 16-year analytic time frame to generate the annual cost of compliance for each option EPA considered. EPA based the 16-year time frame for analysis on the depreciable life for equipment of this type—15 years according to Internal Revenue Service (IRS) rules—plus a mid-year convention for putting the new equipment in operation (*i.e.,* six months between purchase, installation and operation). The model generates the present value and annualized post-tax cost for each option for each site in the survey, which are then used in the subcategory, site, and company analyses, discussed below. In the base case, the Agency adopts an assumption of zero "cost pass-through" of compliance costs. The Agency also estimates a "cost pass-through" factor from the market model discussed below and uses the result to examine the sensitivity of the impact analysis to the "cost pass-through" assumption.

In the subcategory analysis, EPA models the economic impacts of regulatory costs from individual subcategories on a site. The site analysis evaluates the combined costs on the profitability of the site. In both, the model compares the present value of forecasted cash flow over 16 years with the present value of the regulatory option over the same 16-year period. If the present value of the regulatory costs exceeds that of the projected cash flow, it does not make financial sense to upgrade the site. That is, if the present value of projected cash flow is positive before, but negative after, the incurrence of regulatory costs, the site is presumed to close. the analysis, cash flow at the site-level is defined as the sum of net income and depreciation. The measure is widely used within industry in evaluating capital investment decisions because both net income and depreciation (which is an accounting offset against income, but not an actual cash expenditure) are potentially available to finance future investment. However, assuming that total cash flow is available over an extended time horizon (for example, 15 years) to finance investments related to environmental compliance could overstate a site's ability to comply. EPA requests comment (see Section XIV for an amplified discussion) on its use of cash flow as a measure of resources available to finance environmental compliance and suggestions for alternative methodologies.

EPA developed three forecasting models for the iron and steel industry. None of these methods assume any growth in real terms and are calculated in terms of constant 1997 dollars. This conservative approach precludes any site from "growing" its way out of financial difficulties imposed by the regulation. Site-specific data are only available for 1995 to 1997. The period form 1998 to 2001 is the rulemaking period and the forecasting methods begin. Promulgation is scheduled for 2002; this is taken as the first year of implementation and the beginning of the 16-year period over which to consider the regulatory impact on projected earnings. The first two models explicitly address the sharp downturn in the industry after 1997 but differ in the strength and duration of recovery and subsequent downturns. That is, both address the cyclicality seen in the iron and steel industry, but with differing magnitudes and timing. The third forecasting method is a three-year average (1995 through 1997) to provide an "upper bound" analysis.

EPA calculates the post-regulatory status of a site as the present value of forecasted earnings minus the after-tax present value of regulatory costs. With three forecasting methods, there are three ways to evaluate each site. If a site's post-regulatory status is less than zero, EPA assigned a score of "1" for that forecasting method. A site, then, may have a score ranging from zero to three. Closure is the most severe and irrecoverable impact for the site. Such a decision is not made lightly. A business would examine a site's future in several ways and would likely make a determination to close a site only when the weight of evidence so indicated. EPA followed the same decision-making logic; a score of 2 or 3 is interpreted to identify the long-term non-viability of the site.

EPA could not perform an economic analysis of a number of sites at the subcategory and site levels, even though the annualized costs were calculated. these sites, the analysis defaults to the company level. A site may be in this category for several reasons: It is a cost center; it is a "captive" site that exists primarily to produce products transferred to other sites under the same ownership; components for the analysis are not recorded on the site's books, only those of the company; or the site's cash flow is negative for at least two years (sufficient to project a negative present value for earnings). Consistent with OMB guidance, EPA estimated postcompliance closures by counting projected closures due solely to the effect of the proposed rule. Direct impacts, such as loss in employment, revenues, production, and (possibly) exports are calculated from projected closures.

EPA evaluated many methods to estimate corporate financial distress reported in the economic literature of the last ten years and chose the "Altman's Z'" model. This well-known and well-tested model was developed to analyze the financial health of both private and public manufacturing firms. It is based on empirical data and creates a weighted average of financial ratios, thus avoiding the difficulty in interpreting multiple ratios with differing implications for financial health. The single index, Z', is compared against the ranges developed by Altman to indicate "good," "indeterminate," and "distressed" financial conditions. EPA examines 1997 financial data (the most recent collected in the survey) to estimate the pre-regulatory company conditions. EPA then aggregates costs for all sites belonging to that company. EPA recalculates Altman's Z' after incorporating the effects of the pollution control compliance costs into the income statement and balance sheet for the company. All companies whose "Altman's Z'" score changes such that the company goes from a "good" or "indeterminate" baseline category to a "distressed" postcompliance category are classified as impacted. Such companies may have significant difficulties raising the capital needed to comply with the proposed rule, which can indicate the likelihood of bankruptcy, loss of financial independence, or shedding of assets.

EPA uses input-output analyses to determine the effects of the regulation using national-level employment and output multipliers. Input-output multipliers allow EPA to estimate the effect of a loss in output in the iron and steel industry on the U.S. economy as a whole. Every projected closure has direct impacts in lost employment and output. These direct losses also have repercussions throughout the rest of the economy and the input-output multipliers allow EPA to calculate the national losses in output and employment based on the direct impacts.

EPA also determines the impacts on regional-level employment. The increase in metropolitan statistical area (MSA) unemployment level, or county if

non-metropolitan, is calculated for each MSA or county in which there is at least one projected closure.

EPA investigated the industry-wide market effects of the regulation. EPA performed a 3-stage non-linear least-squares econometric estimation of a single-product translog cost model based on 20 years of U.S. Census and industry data. The market supply relationship is derived from the cost function and accounts for the effect of imperfect competition in the steel market. The model also incorporates international trade. The model estimates the supply shift, and the resulting changes in: domestic price, domestic consumption, export demand, and import supply. The model results may be used to estimate a "cost pass-through" factor indicating the portion of the increased cost that the iron and steel industry can pass through to the customers.

D. Economic Costs and Impacts of Technology Options by Subcategory

In this section, EPA presents the capital costs and post-tax total annualized costs for each technology option in each subcategory. As discussed above in Section VI.C.2, the cost annualization model derives total post-tax annualized costs from site-specific capital costs, one-time noncapital costs, and operating and maintenance costs, but only capital costs are reported here. a detailed presentation of all costing information, see Section V. As noted in Section VI.B, ten facilities are projected to close under baseline conditions and are not included further in the economic analysis. this reason, the costs and removals reported in Section VI. will differ from the results reported in the engineering analysis in Section V.

The Agency evaluates the first stage of the impact analysis by projecting the impacts associated with the regulatory costs for a single subcategory (or segment) at a site. example, a fully integrated facility may have cokemaking, ironmaking, integrated steelmaking, hot forming and finishing operations, but the postcompliance cash flow analysis only reflects the regulatory costs associated with a single subcategory. This stage of the analysis serves as a screening mechanism for potentially significant impacts for facilities which may be impacted by options in multiple subcategories. Alternatively, for any facility with operations in a single subcategory such as a stand-alone coke plant, this stage represents the complete facility level analysis.

1. Cokemaking

a. By-product Cokemaking.

i. *BAT.* The regulatory compliance costs associated with BAT options 1 and 2 for by-product cokemaking are not projected to result in any postcompliance facility closures. The regulatory compliance costs associated with BAT Options 3 and 4 are projected to result in one postcompliance closure, with a potential job loss of less than 500 full time equivalent employees (FTEs).

TABLE VI.D.1 BAT OPTIONS, COSTS, AND IMPACTS FOR BY-PRODUCT COKEMAKING

OPTION	Pre-tax capital cost (1999$ M)	Post-tax total annualized cost (1999$ M)	Impacts
			Closures/Job losses
1	$8.3	$1.0	0/0
2	12.9	4.1	0/0
3	35.8	7.2	1/<500
4	56.1	12.2	1/<500

ii. *PSES.* The regulatory compliance costs associated with PSES options 1, 2, 3, and 4 are not projected to result in any postcompliance closures.

TABLE VI.D.2 PSES OPTIONS, COSTS, AND IMPACTS FOR BY-PRODUCT COKEMAKING

OPTION	Pre-tax capital cost (1999$ M)	Post-tax total annualized cost (1999$ M)	Impacts
			Closures/Job losses
1	$0.0	$0.2	0/0
2	6.2	1.8	0/0
3	19.3	4.1	0/0
4	33.4	6.7	0/0

iii. *NSPS and PSNS.* The technology options EPA considered for new sources are identical to those it considered for existing dischargers. Engineering analysis indicates that the cost of installing pollution control systems during new construction is less than the cost of retrofitting existing facilities. Because EPA projects the costs for new sources to be less than those for existing sources and because limited or no impacts are projected for existing sources, EPA does not expect significant economic impacts for new sources.

b. *Non-recovery Cokemaking.* i. *BAT and PSES.* The technology option for both BAT and PSES is zero discharge. No compliance costs are associated with these options as all existing sources currently meet the zero discharge requirement. Since there are no compliance costs, there are no impacts resulting from the BAT and PSES option.

ii. *NSPS and PSNS.* The technology option EPA considered for new sources are identical to those it considered for existing dischargers. No compliance costs are associated with the zero discharge option, just as in the case of existing sources. Likewise, no impacts are projected to result from the new source requirements, just as in the case of existing sources.

2. Ironmaking

a. *BAT and PSES.* The regulatory compliance costs associated with the BAT option and the PSES option are not projected to result in any postcompliance closures. The Agency does not separately present costs for direct and indirect dischargers, because there are less than 3 indirect dischargers and data aggregation or other masking techniques are insufficient to avoid disclosure of information claimed as confidential business information.

TABLE VI.D.3 BAT AND PSES COSTS AND IMPACTS FOR IRONMAKING SUBCATEGORY

	Pre-tax Capital cost (1999 $ M)	Post-tax Total Annualized Cost (1999 $ M)	Impacts
			Closures/Job losses
BAT and PSES	$26.8	$4.5	0/0

b. *NSPS and PSNS.* The technology options EPA considered for new sources are identical to those it considered for existing dischargers. Engineering analysis indicates that the cost of installing pollution control systems during new construction is less than the cost of retrofitting existing facilities. Because EPA projects the costs for new sources to be less than those for existing sources and because limited or no impacts are projected for existing sources, EPA does not expect significant economic impacts for new sources.

3. Integrated Steelmaking

a. *BAT and PSES.* The regulatory compliance costs associated with the BAT option and the PSES option are not projected to result in any postcompliance closures. The Agency does not separately present costs for direct and indirect dischargers, because there are less than 3 indirect dischargers and data aggregation or other masking techniques are insufficient to avoid disclosure of information claimed as confidential business information.

TABLE VI.D.4 BAT AND PSES COSTS AND IMPACTS FOR INTEGRATED STEELMAKING

	Pre-tax capital cost (1999$ M)	Post-tax Total annualized cost (1999$ M)	Impacts
			Closures/ Job losses
BAT and PSES	$17.5	$3.6	0/0

b. *NSPS and PSNS.* The technology options EPA considered for new sources are identical to those it considered for existing dischargers. Engineering analysis indicates that the cost of installing pollution control systems during new construction is less than the cost of retrofitting existing facilities. Because EPA projects the costs for new sources to be less than those for existing sources and because limited or no impacts are projected for existing sources, EPA does not expect significant economic impacts for new sources.

4. Integrated and Stand-alone Hot ming

a. *Carbon and Alloy.* i. *BAT and PSES.* The regulatory compliance costs associated with the BAT option and the PSES option are not projected to result in any postcompliance closures.

TABLE VI.D.5 BAT AND PSES COSTS AND IMPACTS FOR INTEGRATED AND HOT MING, CARBON

	Pre-tax capital cost (1999$ M)	Post-tax Total annualized cost (1999$ M)	Impacts
			Closures/Job losses
BAT	$116.3	$21.2	0/0
PSES	0.3	0.1	0/0

ii. *NSPS and PSNS.* The technology options EPA considered for new sources are identical to those it considered for existing dischargers. Engineering analysis indicates that the cost of installing pollution control systems during new construction is less than the cost of retrofitting existing facilities. Because EPA projects the costs for new sources to be less than those for existing sources and because limited or no impacts are projected for existing sources, EPA does not expect significant economic impacts for new sources.

b. *Stainless.* i. *BAT and PSES.* The regulatory compliance costs associated with the BAT option and the PSES option are not projected to result in any postcompliance closures.

TABLE VI.D.6 BAT AND PSES COSTS AND IMPACTS FOR INTEGRATED AND HOT MING, STAINLESS

	Pre-tax Capital cost (1999$ M)	Post-tax total annualized cost (1999$ M)	Impacts
			Closures/Job losses
BAT:			
PSES	$0.8	$0.1	0/0

ii. *NSPS and PSNS.* The technology options EPA considered for new sources are identical to those it considered for existing dischargers. Engineering analysis indicates that the cost of installing pollution control systems during new construction is less than the cost of retrofitting existing facilities. Because EPA projects the costs for new sources to be less than those for existing sources and because limited or no impacts are projected for existing sources, EPA does not expect significant economic impacts for new sources.

5. Non-Integrated Steelmaking and Hot ming

a. Carbon and Alloy. i. *BAT and PSES.* The regulatory compliance costs associated with the BAT option and the PSES option are not projected to result in any postcompliance closures.

TABLE VI.D.7.—BAT AND PSES COSTS AND IMPACTS FOR NON-INTEGRATED STEELMAKING AND HOT MING, CARBON AND ALLOY

	Pre-tax capital cost (1999$ M)	Post-tax total annualized cost (1999$ M)	Impacts
			Closures/ Job losses
BAT	$19.0	$2.8	0/0
PSES	2.6	0.4	0/0

ii. *NSPS and PSNS.* The technology options EPA considered for new sources are identical to those it considered for existing dischargers, with the addition of a zero discharge option. A substantial number of recently constructed facilities have been able to achieve zero discharge. EPA believes the zero discharge new source option would not present a barrier to entry because as of 1997, a total of 24 nonintegrated facilities of all types have been able to achieve zero discharge.

b. *Stainless.* i. *BAT and PSES.* The regulatory compliance costs associated with either BAT option and the PSES option are not projected to result in any postcompliance closures.

TABLE VI.D.8.—BAT AND PSES COSTS AND IMPACTS FOR NON-INTEGRATED STEELMAKING AND HOT MING, STAINLESS

	Pre-tax capital cost (1999$ M)	Post-tax total annualized cost (1999$ M)	Impacts
			Closures/ Job losses
BAT 1	$0.4	$0.1	0/0
BAT 2	3.8	0.7	0/0
PSES	0.0	0.02	0/0

ii. *NSPS and PSES.* The technology options EPA considered for new sources are identical to those it considered for existing dischargers, with the addition of a zero discharge option. A substantial number of recently constructed facilities have been able to achieve zero discharge. EPA believes the zero discharge new source option would not present a barrier to entry because as of 1997, a total of 24 nonintegrated facilities of all types have been able to achieve zero discharge.

6. Steel Finishing

a. *Carbon and Alloy.* i. *BAT and PSES.* The regulatory compliance costs associated with the BAT option and the PSES option are not projected to result in any postcompliance closures.

TABLE VI.D.9.—BAT AND PSES COSTS AND IMPACTS FOR STEEL FINISHING, CARBON AND ALLOY

	Pre-tax capital cost (1999$ M)	Post-tax total annualized cost (1999$ M)	Impacts
			Closures/ Job losses
BAT	$14.8	$2.9	0/0
PSES	6.2	1.7	0/0

ii. *NSPS and PSNS.* The technology options EPA considered for new sources are identical to those it considered for existing dischargers. Engineering analysis indicates that the cost of installing pollution control systems during new construction is less than the cost of retrofitting existing facilities. Because EPA projects the costs for new sources to be less than those for existing sources and because limited or no impacts are projected for existing sources, EPA does not expect significant economic impacts for new sources.

b. *Stainless* i. *BAT and PSES.* The regulatory compliance costs associated with the BAT option and the PSES option are not projected to result in any postcompliance closures.

TABLE VI.D.10.—BAT AND PSES COSTS AND IMPACTS FOR STEEL FINISHING, STAINLESS

	Pre-tax capital cost (1999$ M)	Post-tax total annualized cost (1999$ M)	Impacts
			Closures/ Job losses
BAT	$15.8	$0.2	0/0
PSES	4.2	0.4	0/0

ii. *NSPS and PSNS.* The technology options EPA considered for new sources are identical to those it considered for existing dischargers. Engineering analysis indicates that the cost of installing pollution control systems during new construction is less than the cost of retrofitting existing facilities. Because EPA projects the costs for new sources to be less than those for existing sources and because limited or no impacts are projected for existing sources, EPA does not expect significant economic impacts for new sources.

7. *Other Operations.*

a. *Direct Reduced Iron.* i. *BPT.* The regulatory compliance costs associated with the BPT option are not projected to result in any postcompliance closures. The Agency does not present costs for direct dischargers, because there are only 2 direct dischargers in this segment and data aggregation or other masking techniques are insufficient to avoid disclosure of information claimed as confidential business information.

TABLE VI.D.11.—BPT COSTS AND IMPACTS DIRECTED REDUCED IRON

	Pre-tax capital cost (1999$ M)	Post-tax total annualized cost (1999$ M)	Impacts
			Closures/ Job losses
BPT			0/0

b. *ging.* i. *BPT.* The regulatory compliance costs associated with the BPT option are not projected to result in any postcompliance closures.

TABLE VI.D.12.—BPT COSTS AND IMPACTS GING

	Pre-tax capital cost (1999$ M)	Post-tax total annualized cost (1999$ M)	Impacts
			Closures/ Job losses
BPT	$0.0	$0.05	0/0

E. Facility Level Economic Impacts of Regulatory Options

In this section, the Agency evaluates the second stage of the impact analysis by projecting the impacts associated with the regulatory costs for all subcategories affected at a facility or site (the terms are used interchangeably). example, a fully integrated facility may have cokemaking, ironmaking, integrated steelmaking, hot forming and finishing operations, and the postcompliance cash flow analysis reflects the regulatory costs associated with all affected operations at the site. This stage of the analysis evaluates the aggregate regulatory costs and impacts upon each facility, which may be subject to the proposed rule and incur compliance costs in multiple subcategories.

The incorporation of the aggregate regulatory costs based upon the proposed options across all subcategories into the postcompliance cash flow analysis does not generate any additional projected facility closures (one facility closure was projected in the first stage of analysis—see Section VI.D.1). The Agency conducted the facility level analysis both with and without allowing for potential cost passthrough and the results are unchanged. The Agency determines the set of proposed options across all subcategories to be economically achievable.

F. Firm Level Impacts

In this section, the Agency evaluates the economic impacts of the regulatory options to the firms that own the facilities potentially subject to this proposed rule. EPA evaluates the third stage of the impact analysis by incorporating the regulatory costs borne by each facility into the financial status of the firm that owns the facility or multiple facilities. example, if a company owns an integrated facility, a stand-alone coke facility, and a stand-alone finishing facility, the aggregate regulatory costs for all three facilities are added to the baseline or precompliance financial conditions of the firm as reflected by the firm income statement and balance sheet. The Agency then calculates the postcompliance Altman Z-score and checks for changes in financial status from good or indeterminate to distressed with any such changes to be considered impacts.

In any combination of costs that includes the adoption of the BAT option for carbon and alloy steel segment of the integrated and stand-alone hot forming subcategory, the Agency projects the financial health of at least one multiple facility firm to deteriorate from indeterminate to financially distressed. A financially distressed company may have significant difficulties raising the capital needed to comply with the proposed rule, which can lead to the sale of assets, likelihood of bankruptcy, or the loss of financial independence. The one or more firms that are projected to be impacted have a current work force numbering in the several

thousands. In contrast, any combination of costs that does not include adoption of the BAT option for the carbon and alloy steel segment of the integrated and stand-alone hot forming subcategory, the Agency projects no firms to experience an impact.

The Agency projected only one postcompliance facility closure in the facility-level analysis for the entire proposed rule. This result indicates the viability of virtually all facilities as going concerns. The firm level analysis projects at least one firm may be financially distressed postcompliance. Given the continued viability of virtually all facilities including those in the carbon and alloy steel segment of the integrated and stand-alone hot forming subcategory, EPA expects that a financially distressed firm would respond to the financial distress by selling assets. The sale of assets (such as a facility) may include the continued operation by the purchasing firm, resulting in limited job losses or secondary impacts. The Agency determines the set of proposed options across all subcategories to be economically achievable.

G. Community Impacts

The Agency evaluates community impacts by examining the potential increase in county or metropolitan statistical area (MSA) unemployment. The Agency assumes all employees of the affected facilities reside in the county (if the county is not part of a larger metropolitan area) or metropolitan area in which the facilities are located. In the case of the single facility closure/firm associated with the by-product cokemaking BAT options 3 and 4, the impacts increase the county unemployment rate by 0.6 percent.

In the case of the BAT option for the carbon and alloy steel segment of the integrated and stand-alone hot forming subcategory, the Agency examines the effects if the one or more firms that become financially distressed lay off all of its workers, which corresponds to a worst case scenario. The one or more distressed firms have multiple facilities in various locations. The Agency assumes all employees of each affected facility reside in the county or metropolitan area in which the facility is located. The resulting impacts range from increasing the metropolitan unemployment rate by less than 0.1 percentage points to increasing the metropolitan unemployment rate by 2.1 percentage points, depending on the size of the affected community, the size of the affected facility and the prevailing unemployment rate. Although the Agency recognizes that an increase in community level unemployment of 2.1 percentage points would be significant, the Agency believes the actual community impacts associated with the one or more distressed firms would be much less than the worst case scenario presented here, given the results of the firm level analysis described above in Section VI.F and the opportunity for financially distressed firms to sell, rather than close, a viable facility.

H. eign Trade Impacts

The Agency evaluates the potential for foreign trade impacts by application of the market model. The aggregate regulatory compliance costs are incorporated to estimate the postcompliance impacts. If the proposed set of options is adopted, the analysis indicates 0.23 to 0.25 percent decrease in exports (decreases of $9.2 million to $9.9 million) and 0.11 to 0.12 percent increase in imports (increases of $7.5 million to $8.1 million).

I. Small Business Analysis

Based upon information provided in the Collection of 1997 Iron and Steel Industry Data (Section 308 Survey), the Agency was able to reasonably determine the appropriate SIC classification for each company. EPA applied the relevant SBA size standard for each SIC to determine whether each company was to be considered a small entity. SBA has recently finalized size standards for each NAICS industry; however, EPA determined that no companies change classification under the new NAICs standards. The SIC classifications observed were predominantly SICs 3312, 3316 and 3317, with a number of other industries also reported. The relevant size standards varied from 500 to 1500 employees, and included a few revenue based standards. EPA identified an estimated 34 small entities that may be affected by the rule among the estimated 115 total companies potentially affected by the rule. EPA has fully evaluated the economic achievability of the proposed rule to affected small entities. The economic achievability analysis was conducted using a discounted cash flow approach for the facility analysis and the Altman Z test for the firm analysis (for a full discussion, see Section VI.C.). EPA projects that one small entity (a firm owning a single facility) may incur an impact such as facility closure or firm failure. Further, for small entities, EPA examined the compliance cost to revenue ratio to identify any other potential impacts of the rule upon small entities. Using the most stringent set of co-proposed options, EPA has determined that the range is between 0 and 1.91 percent with only three entities experiencing an impact of greater than 1%.

J. Cost-Benefit Analysis

The Agency estimates the total monetized social costs of the proposed rule range between $56.5 million and $61.4 million and the total monetized social benefits range between $1.1 million and $2.7 million.

K. Cost-Effectiveness Analysis

This section provides the cost-effectiveness analysis of the BAT and PSES regulatory options by subcategory. The cost-effectiveness analysis compares the total annualized cost incurred for a regulatory option to the corresponding effectiveness of that option in reducing the discharge of pollutants.

Cost-effectiveness calculations are used during the development of effluent limitations guidelines and standards to compare the efficiency of one regulatory option in removing pollutants to another regulatory option. Cost-effectiveness is defined as the incremental annual cost of a pollution control option in an industry subcategory per incremental pollutant removal. The increments are considered relative to another option or to a benchmark, such as existing treatment. In cost-effectiveness analyses, pollutant removals are measured in toxicity normalized units called "pound-equivalents." The cost-effectiveness value, therefore, represents the unit cost of removing an additional pound-equivalent (lb. eq.) of pollutants. In general, the lower the cost-effectiveness value, the more cost-efficient the regulation will be in removing pollutants, taking into account their toxicity. While not required by the Clean Water Act, cost-effectiveness analysis is a useful tool for evaluating regulatory options for the removal of toxic pollutants. Cost-effectiveness analysis does not take into account the removal of conventional pollutants (*e.g.*, oil and grease, biochemical oxygen demand, and total suspended solids).

the cost-effectiveness analysis, the estimated pound-equivalents of pollutants removed were calculated by multiplying the number of pounds of each pollutant removed by the toxic weighting factor for each pollutant. The more toxic the pollutant, the higher will be the pollutant's toxic weighting factor; accordingly, the use of pound-equivalents gives correspondingly more weight to pollutants with higher toxicity. Thus, for a given expenditure and pounds of pollutants removed, the cost per pound-equivalent removed

would be lower when more highly toxic pollutants are removed than if pollutants of lesser toxicity are removed. Annual costs for all cost-effectiveness analyzes are reported in 1981 dollars so that comparisons of cost-effectiveness may be made with regulations for other industries that were issued at different times.

1. Cokemaking

a. *By-product Cokemaking.* i. *BAT.* The first three BAT options for this segment display significant incremental pollutant reductions (as measured in lb-equivalents). BAT option 4 results in very limited additional pollutant removals beyond BAT option 3 with very substantial increases in capital and total annualized costs.

TABLE VI.K.1 BAT REMOVALS AND COST-EFFECTIVENESS FOR BY-PRODUCT COKEMAKING

OPTION	Pre-tax total annualized cost (1999$ M)	Removals (lb-eq)	Incremental cost effective-ness (1981$/lb-eq)	Average cost effectiveness (1981$/lb-eq);
1	$0.9	56,300	$10	$10
2	4.4	71,200	134	36
3	8.9	147,600	35	35
4	15.8	147,700	38,300	63

ii. *PSES.* All PSES options result in significant removals with PSES option 1 imposing very low incremental costs, PSES option 2 imposing moderate incremental costs, PSES option 3 providing very substantial removals with relatively modest incremental costs, and PSES option 4 providing limited additional removals with higher incremental costs.

TABLE VI.K.2 PSES REMOVALS AND COST-EFFECTIVENESS FOR BY-PRODUCT COKEMAKING

OPTION	Pre-tax total annualized cost (1999$ M)	Removals (lb-eq)	Incremental cost effective-ness (1981$/lb-eq)	Average cost effectiveness (1981$/lb-eq);
1	$0.3	3,400	$52	$52
2	2.3	5,600	527	240
3	5.2	48,500	39	62
4	8.8	51,400	729	100

b. *Non-recovery Cokemaking.* i. *BAT and PSES.* The Agency is evaluating a technology option for the Non-recovery Cokemaking Segment which is based on zero discharge for BAT and PSES and is estimated to have no associated regulatory compliance costs as all existing non-recovery cokemaking facilities achieve the zero discharge limitation. As a result, a cost-effectiveness analysis cannot be constructed for this segment.

2. Ironmaking

a. *BAT and PSES.* The evaluated BAT option yields substantial removals with relatively low compliance costs. The Agency does not separately present results for direct and indirect dischargers, because there are fewer than 3 indirect dischargers and data aggregation or other masking techniques are insufficient to avoid disclosure of information claimed as confidential business information.

TABLE VI.K.3 BAT AND PSES REMOVALS AND COST-EFFECTIVENESS FOR IRONMAKING

	Pre-tax total annualized cost (1999$ M)	Removals (lb-eq)	Incremental cost effective-ness (1981$/lb-eq)
BAT and PSES	$5.6	63,200	$52

3. Integrated Steelmaking

a. *BAT and PSES.* The evaluated BAT option yields substantial removals with relatively low compliance costs. The Agency does not separately present results for direct and indirect dischargers, because there are less than 3 indirect dischargers and data aggregation or other masking techniques are insufficient to avoid disclosure of information claimed as confidential business information.

TABLE VI.K.4—BAT AND PSES REMOVALS AND COST EFFECTIVENESS FOR INTEGRATED STEELMAKING SUBCATEGORY

	Pre-tax total annualized cost (1999$ M)	Removals (lb-eq)	Incremental cost effectiveness (1981 $/lb-eq)
BAT and PSES	$5.0	102,600	$29

4. Integrated and Stand-Alone Hot ming

a. *Carbon and Alloy.* i. BAT and PSES. The evaluated BAT option yields substantial removals with moderate compliance costs. The evaluated PSES option yields very limited removals with a relatively low costs.

TABLE VI.K.5—BAT AND PSES REMOVALS AND COST-EFFECTIVENESS, INTEGRATED AND STAND-ALONE HOT MING, CARBON AND ALLOY

	Pre-tax total annualized cost (1999$ M)	Removals (lb-eq)	Incremental cost effectiveness (1981$/lb-eq)
BAT	$28.6	87,200	$191
PSES	0.1	100	319

b. *Stainless.* i. *BAT and PSES.* There were no directly discharging facilities identified in the EPA survey. The evaluated PSES option yields extremely limited removals with a relatively low costs.

5. Nonintegrated Steelmaking and Hot ming

a. *Carbon and Alloy.* i. *BAT and PSES* The evaluated BAT option yields substantial removals with relatively low compliance costs. The evaluated PSES option yields very small removals with modest compliance costs.

TABLE VI.K.6—BAT AND PSES REMOVALS AND COST-EFFECTIVENESS, INTEGRATED AND STAND-ALONE HOT MING, STAINLESS

	Pre-tax total annualized cost (1999$ M)	Removals (lb-eq)	Incremental cost effectiveness (1981$/lb-eq)
BAT			
PSES	$0.2	10	$12,000

5. Nonintegrated Steelmaking and Hot ming

a. *Carbon and Alloy.* i. *BAT and PSES.* The evaluated BAT option yields substantial removals with relatively low compliance costs. The evaluated PSES option yields very small removals with modest compliance costs.

TABLE VI.K.7—BAT AND PSES REMOVALS AND COST-EFFECTIVENESS, NONINTEGRATED STEELMAKING AND HOT MING, CARBON AND ALLOY

	Pre-tax total annualized cost (1999$ M)	Removals (lb-eq)	Incremental cost effectiveness (1981 $/lb-eq)
BAT	$4.2	39,100	$62
PSES	0.6	40	9,200

b. *Stainless.*s i. *BAT and PSES.* The evaluated BAT 1 and PSES 1 options both yield substantial removals with relatively low compliance costs, while the BAT 2 options yields very limited removals with substantial costs.

TABLE VI.K.8—BAT AND PSES REMOVALS AND COST-EFFECTIVENESS NONINTEGRATED STEELMAKING AND HOT MING, STAINLESS

	Pre-tax total annualized cost (1999$ M)	Removals (lb-eq)	Cost effectiveness (1981 $/lb-eq) incremental
BAT 1	$0.1	1,873	$35
BAT 2	0.9	1,874	440,000
PSES 1	0.03	1,501	11

6. Steel Finishing

a. *Carbon and Alloy.* i. *BAT and PSES.*

The evaluated BAT option yields substantial removals with relatively low compliance costs. The evaluated PSES option yields very small removals with modest compliance costs.

TABLE VI.K.9—BAT AND PSES REMOVALS AND COST-EFFECTIVENESS, STEEL FINISHING, CARBON AND ALLOY

	Pre-tax total annualized cost (1999$ M)	Removals (lb-eq)	Incremental cost effectiveness (1981 $/lb-eq)
BAT	$3.5	16,600	$126
PSES	1.9	400	2,900

b. *Stainless.*

i. BAT and PSES

The evaluated BAT option yields substantial removals with very low compliance costs. The evaluated PSES option yields limited removals with modest compliance costs.

TABLE VI.K.10—BAT AND PSES REMOVALS AND COST-EFFECTIVENESS, STEEL FINISHING, STAINLESS

	Pre-tax total annualized cost (1999$ M)	Removals (lb-eq)	Incremental cost effectiveness (1981 $/lb-eq)
BAT	$0.2	69,700	$2
PSES	0.6	650	525

7. Other Operations

The Agency is evaluating technology options for Direct Reduced Ironmaking and ging segments for the control of only conventional parameters at BPT (see Section VI.L). The Agency is evaluating a technology option for the Briquetting Segment which is based on zero discharge and is estimated to have no associated regulatory compliance costs. As a result, a cost-effectiveness analysis cannot be constructed for these segments.

L. Cost-Reasonableness Analysis

As stated in Section VI.K, the Agency is evaluating technology options for the Direct Reduced Ironmaking and ging segments of the Other Operations Subcategory for the control of only conventional parameters at BPT. CWA Section 304(b)(1)(B) requires a cost-reasonableness assessment for BPT limitations. In determining BPT limitations, EPA must consider the total cost of treatment technologies in relation to the effluent reduction benefits achieved by such technology. This inquiry does not limit EPA's broad discretion to adopt BPT limitations that are achievable with available technology unless the required additional reductions are wholly out of proportion to the costs of achieving such marginal reduction.

The cost-reasonableness ratio is average cost per pound of pollutant removed by a EPT regulatory option. The cost component is measured as pre-tax total annualized costs (1999$). In this case, the pollutants removed are conventional pollutants although in some cases, removals may include priority and nonconventional pollutants. the Direct Reduced Ironmaking segment, the evaluated BPT option 1 removes approximately 800 pounds of conventional pollutants with a cost-reasonableness ratio of $6. the ging segment, the evaluated BPT option 1 removes approximately 500 pounds of conventional pollutants with a cost-reasonableness ratio of $15. EPA considers the cost-reasonableness ratio to be acceptable and the proposed option to be cost-reasonable in both segments.

VII. Water Quality Analysis and Environmental Benefits

EPA evaluated the environmental benefits of controlling the discharges of 60 priority and nonconventional pollutants from iron and steel facilities to surface waters and POTWs in national analyses of direct and indirect discharges. A total of 125 analytes were found in iron and steel effluents. Ambient water quality criteria (AWQC) or toxicity profiles are established for 60 of those analytes. Discharges of these pollutants into freshwater and estuarine ecosystems may alter aquatic habitats,

adversely affect aquatic biota, and adversely impact human health through the consumption of contaminated fish and drinking water.

Furthermore, these pollutants may also interfere with POTW operations in terms of inhibition of activated sludge or biological treatment and contamination of sewage sludges, thereby limiting the methods of disposal for sewage sludge and the POTW's costs (though, as noted below, there is no evidence of this for this sector). Most of these pollutants have at least one known toxic effect (human health carcinogen and/or systemic toxicant or aquatic toxicant). In addition, many of these pollutants bioaccumulate in aquatic organisms and persist in the environment.

The Agency did not evaluate the effects of conventional pollutants discharged from iron and steel mills on aquatic life and human health because of a lack of quantitative AWQC. EPA did not evaluate the effects of conventional pollutants on POTWs because POTWs are designed to treat these pollutants. However, the discharge of a conventional pollutant such as total suspended solids (TSS) or oil & grease can have adverse effects on aquatic life and the environment. example, habitat degradation can result from increased suspended particulate matter that reduces light penetration, and thus primary productivity, or from accumulation of suspended particles that alter benthic spawning grounds and feeding habitats.

Oil and grease produce toxic effects on aquatic organisms (*i.e.,* fish, crustacea, larvae and eggs, gastropods, bivalves, invertebrates, and flora). The marine larvae and benthic invertebrates, appear to be the most intolerant of petroleum products, particularly the water-soluble compounds, at concentrations ranging from 0.1 ppm to 25 ppm and 1 ppm to 6,100 ppm, respectively. However, since oil and grease is not a definitive chemical category, but instead includes many organic compounds with varying physical, chemical, and toxicological properties, it is difficult for EPA to establish a numerical criterion which would be applicable to all types of oil and grease. this reason, EPA does not model the effects of oil and grease on the environment.

Of a total of 254 iron and steel facilities, EPA evaluated 150 facilities, of which 103 are direct wastewater dischargers that discharge up to 60 pollutants to 77 receiving streams and 47 are indirect wastewater dischargers discharging up to 60 pollutants to 43 receiving streams. EPA did not evaluate 56 facilities with zero discharge or 48 facilities for which EPA had insufficient data to conduct the water quality analysis. To estimate some of the benefits from the improvements in water quality expected to result from this rule, instream concentration estimates are modeled and then compared to aquatic life and human health ambient water quality criteria (AWQC) guidance documents published by EPA or to toxic effect levels. States often consult these water quality criteria guidance documents when adopting water quality criteria as part of their water quality standards. However, because those State-adopted criteria may vary, for this analysis EPA used the nationwide criteria guidance as the representative values for the particular pollutants. EPA also modeled the effects of iron and steel discharges on POTWs. Results of the of the 150 facilities were extrapolated to the national level of 198 direct and indirect dischargers, using the statistical methodology for estimating costs, loads, and economic impacts.

Since at least 20% of the iron and steel facilities discharge in multiple waste subcategories, and many waterbody reaches receive discharges from more than one iron and steel facility, EPA chose to perform the environmental assessment analyses on a reach-by-reach basis. The reach-by-reach basis has the advantage over a subcategory-specific basis in that it more accurately predicts the overall effects of the rule on the environment.

In addition, EPA reviewed the CWA section 303(d) lists of impaired waterbodies developed by States in 1998 and noted that at least 17 waterbodies, identified with industrial point sources as a potential source of impairment, receive direct discharges from iron and steel facilities (and other sources). EPA also identified 12 waterbodies with fishing advisories for iron and steel pollutants of concern (mercury) that receive direct discharges from iron and steel facilities (and other sources).

EPA expects a variety of human health, environmental, and economic benefits to result from reductions in effluent loadings (see *Environmental Assessment of the Proposed Effluent Guidelines for the Iron and Steel Industry,* (Environmental Assessment)). In particular, the benefits assessment addresses the following benefit categories: (a) Human health benefits due to reductions in excess cancer cases; (b) human health benefits due to reductions in lead exposure; (c) human health benefits due to reductions in noncarcinogenic hazard (systemic); (d) ecological and recreational benefits due to improved water quality with respect to toxic pollutants; and (e) benefits to POTWs from reductions in interference, pass through, and biosolid contamination, and elimination of some of the efforts associated with establishing local pretreatment limits.

A. Reduced Human Health Cancer Risk

EPA expects that reduced loadings to surface waters associated with the proposed rule would reduce excess cancer cases by approximately 0.01 per year with estimated monetized benefits of $24,000 to $126,000 ($1997). These estimated benefits are attributable to reducing the cancer risks associated with consuming contaminated fish tissue. EPA developed these benefit estimates by applying an existing estimate of the value of a statistical life to the estimated number of excess cancer cases avoided. The estimated range of the value of a statistical life used in this analysis is $2.4 million to $12.6 million ($1997). EPA's SAB recently recommended that VSL's be adjusted downward using a discount factor to account for latency in cases (such as cancer) where there is a lag between exposure and mortality. This was not done in the current analysis because EPA requires more information to estimate latency periods associated with cancers caused by Iron and Steel pollutants. example, the risk assessments for several pollutants are based on data from animal bioassays; these data are not sufficiently reliable to estimate a latency period for humans. Extrapolating the results to the national level results in a 0.02 cancer case reduction and a monetized benefit of $48,000 to $252,000.

B. Reduced Lead Health Risk

the proposed rule, EPA expects that reduced loadings to surface waters from iron and steel discharges will reduce lead levels in those waters. Under the proposed treatment levels, the ingestion of lead-contaminated fish tissues by recreational and subsistence anglers would be reduced at 79 waterbodies. Because elevated blood lead levels can cause intellectual impairment in exposed children 0 to 6 years of age, benefits to the at-risk child populations are quantified by estimating the reduced potential IQ point loss. Benefits from reduced adult and neonatal mortality are also estimated. The benefits are quantified and monetized using methodologies developed in the Retrospective Analysis of the Clean Air Act (Final Report to Congress on Benefits and Costs of the Clean Air Act, 1970 to 1990; EPA 410–R–97–002). EPA

estimates that this proposed regulation would reduce cases of these adverse health effects; the total benefit for these reductions would be approximately $0.62 to $0.98 million ($1997). Extrapolating the results to the national level results in monetized benefits of $0.64 to $1.01 million ($1997) due to reduced ingestion of lead-contaminated fish tissues at 104 waterbodies.

C. Reduced Noncarcinogenic Human Health Hazard

Exposure to toxic substances poses risk of systemic and other effects to humans, including effects on the circulatory, respiratory or digestive systems and neurological and developmental effects. This proposed rule is expected to generate human health benefits by reducing exposure to these substances, thus reducing the hazards of these associated effects. EPA expects that reduced loadings to surface waters would reduce the number of persons potentially exposed to noncarcinogenic effects, due to consumption of contaminated fish tissue, by approximately 900 people for both the sample set and the national extrapolation of iron and steel facilities. Presently EPA does not have a methodology for monetizing these benefits.

D. Improved Ecological Conditions and Recreational Activity

EPA expects this proposed rule to generate environmental benefits by improving water quality. There is a wide range of benefits associated with the maintenance and improvement of water quality. These benefits include use values (*e.g.*, recreational fishing), ecological values (*e.g.*, preservation of habitat), and passive use (intrinsic) values. example, water pollution might affect the quality of the fish and wildlife habitat provided by water resources, thus affecting the species using these resources. This in turn might affect the quality and value of recreational experiences of users, such as anglers fishing in the affected streams. EPA considers the value of the recreational fishing benefits and intrinsic benefits resulting from this proposed rule, but does not evaluate the other types of ecological and environmental benefits (*e.g.*, increased assimilative capacity of the receiving stream, protection of terrestrial wildlife and birds that consume aquatic organisms, and improvements to other recreational activities, such as swimming, boating, water skiing, and wildlife observation) due to data limitations.

Modeled end-of-pipe pollutant loadings are estimated to decline by about 22 percent, from 227 million pounds per year under current conditions to 177 million pounds per year under this proposed rule (from 253 million pounds per year down to 198 million pounds per year on a national level). The analysis comparing modeled instream pollutant concentration to AWQC estimates that current discharge loadings result in excursions at 44 streams receiving the discharge from iron and steel facilities. The proposed rule would reduce excursions to 41 receiving streams. The number of receiving streams with excursions would be reduced from 55 to 51 streams at the national level.

EPA estimates that the annual monetized recreational benefits to anglers associated with the expected changes in water quality range from $188,000 to $671,000 ($1997). Monetized benefits extrapolated to the national level are $252,000 to $900,000 ($1997). EPA evaluates these recreational benefits by applying a model that considers the increase in value of a "contaminant-free fishery" to recreational anglers resulting from the elimination of all pollutant concentrations in excess of AWQC at 3 of the 44 receiving streams (4 of the 55 receiving streams on a national level). The monetized value of impaired recreational fishing opportunity is estimated by first calculating the baseline value of the receiving stream using a value per person day of recreational fishing, and the number of person-days fished on the receiving stream. The value of improving water quality in this fishery, based on the increase in value to anglers of achieving contaminant-free fishing, is then calculated.

In addition, EPA estimates that the annual monetized intrinsic benefits to the general public, as a result of the same improvements in water quality, range from at least $94,000 to $336,000 ($1997) for the sample set and from at least $126,000 to $450,000 ($1997) at the extrapolated national level. These intrinsic benefits are estimated as half of the recreational benefits and may be under or overestimated.

E. Effect on POTW Operations

EPA considers two potential sources of benefits to POTWs from this proposed regulation: (1) Reductions in the likelihood of interference, pass through, and biosolid contamination problems; and (2) reductions in costs potentially incurred by POTWs in analyzing toxic pollutants and determining whether to, and the appropriate level at which to, set local limits.

EPA has concluded from its analysis that under current conditions POTW operation and biosolid quality are not significantly affected by discharges from iron and steel mills. EPA is presently researching anecdotal evidence from POTW operators to support or refute this position.

F. Other Benefits Not Quantified

The above benefit analyses focus mainly on identified compounds with quantifiable toxic or carcinogenic effects. This potentially leads to an underestimation of benefits, since some pollutant characterizations are not considered. example, the analyses do not include the benefits associated with reducing the particulate load (measured as TSS), or the oxygen demand (measured as BOD5 and COD) of the effluents. TSS loads can degrade ecological habitat by reducing light penetration and primary productivity, and from accumulation of solid particles that alter benthic spawning grounds and feeding habitats. BOD5 and COD loads can deplete oxygen levels, which can produce mortality or other adverse effects in fish, as well as reduce biological diversity.

G. Summary of Benefits

EPA estimates that the annual monetized benefits, at the national level, resulting from this proposed rule range from $1.07 million to $2.61 million ($1997). Table VII.F.1 summarizes these benefits, by category. The range reflects the uncertainty in evaluating the effects of this proposed rule and in placing a dollar value on these effects. As indicated in Table VII.F.1, these monetized benefits ranges do not reflect some benefit categories, including improved ecological conditions from improvements in water quality due to reductions in conventional pollutants. Therefore, the reported benefit estimate may understate the total benefits of this proposed rule.

TABLE VII.F.1—POTENTIAL ECONOMIC BENEFITS (NATIONAL LEVEL)

Benefit category	Millions of 1997 dollars per year
Reduced Cancer Risk	0.05–0.25
Reduced Lead Health Risk.	0.64–1.01
Reduced Noncarcinogenic Hazard.	Unquantified
Improved Ecological Conditions.	Unquantified
Improved Recreational Value.	0.25–0.90
Improved Intrinsic Value.	0.13–0.45

TABLE VII.F.1—POTENTIAL ECONOMIC BENEFITS (NATIONAL LEVEL)—Continued

Benefit category	Millions of 1997 dollars per year
Reduced Biosolid Contamination at POTW.	
Improved POTW Operation (inhibition).	
Reduced Costs at POTWs.	
Total Monetized Benefits.	1.07–2.61

VIII. Non-Water Quality Environmental Impacts

Sections 304(b) and 306 of the Act require EPA to consider non-water quality environmental impacts associated with effluent limitations guidelines and standards. In accordance with these requirements, EPA has considered the potential impact of today's technical options on air emissions, solid waste generation, and energy consumption. While it is difficult to balance environmental impacts across all media and energy use, the Agency has determined that the impacts identified below are acceptable in light of the benefits associated with compliance with the proposed effluent limitations guidelines and standards.

A. Air Pollution

Various subcategories within the Iron and Steel Industry generate process waters that contain significant concentrations of organic and inorganic compounds, some of which are listed as Hazardous Air Pollutants (HAPs) in Title III of the Clean Air Act (CAA) Amendments of 1990. The Agency has developed National Emission Standards for Hazardous Air Pollutants (NESHAPs) under section 112 of the Clean Air Act (CAA) that address air emissions of HAPs for certain manufacturing operations. Subcategories within the Iron and Steel industry where NESHAPs are applicable include cokemaking (58 FR 57898, October 1993) and steel finishing with chromium electroplating and chromium anodizing (60 FR 4948, January 1995).

the cokemaking subcategory, maximum achievable control technology (MACT) standards are currently being developed by EPA for pushing, quenching, and battery stacks. Like effluent guidelines, MACT standards are technology based. The CAA sets maximum control requirements on which MACT can be based for new and existing sources. By-products recovery operations in the cokemaking subcategory remove the majority of HAPs through processes that collect tar, heavy and light oils, ammonium sulfate and elemental sulfur. Ammonia removal by steam stripping could generate a potential air quality issue if uncontrolled; however ammonia stripping operations at cokemaking facilities capture vapors and convert ammonia to either an inorganic salt or anhydrous ammonia, or destroy the ammonia.

Biological treatment of cokemaking wastewater can potentially emit hazardous air pollutants if significant concentrations of volatile organic compounds (VOCs) are present. To estimate the maximum air emissions from biological treatment, the individual concentrations of all VOCs in cokemaking wastewater entering the biological treatment system were multiplied by the maximum design flow and the operational period reported in the U.S. EPA Collection of 1997 Iron and Steel Industry Data to determine annual VOC loadings to the biological treatment unit. The concentrations of the individual VOCs entering the biological treatment system was determined from the sampling episode data. Assuming all the VOCs entering the biological treatment system are emitted to the atmosphere (no biological degradation), the maximum VOC emission rate would be approximately 1,800 pounds per year. See Technical Development Document, Section 13.

Treatment technology options proposed for integrated and non-integrated steelmaking operations focus on removal of suspended solids, dissolved metals and oils from process wastewaters. Under ambient conditions, the vapor pressure of these pollutants is such that insignificant volatilization occurs, even with extended atmospheric contact in open-top treatment units and induced draft cooling towers. EPA does not project any net increase in air emissions if facilities employ the proposed model technologies. As such, no adverse air impacts are expected to occur as a result of the proposed regulations.

B. Solid Waste

Solid waste, including hazardous and nonhazardous sludges and waste oil, will be generated from a number of the model treatment technologies used to develop the proposed effluent limitations guidelines and standards. Solid wastes include sludge from biological treatment systems, chemical precipitation and clarification systems, and gravity separation and dissolved air flotation systems. EPA accounted for the associated costs related to on-site recovery and off-site treatment and disposal of the solid wastes generated due to the implementation of the various technology options. These costs were included in the economic evaluation for the proposed regulation.

Biological nitrification proposed as the technology basis for ammonia removal from cokemaking wastewaters will produce a biological treatment sludge that facilities would need to dispose. EPA estimates that approximately 0.39 million pounds (dry wt.) per year of additional biological treatment sludge will be generated by the cokemaking subcategory as a result of lower effluent ammonia limits. The non-hazardous biological treatment sludges can be disposed in a Subtitle D landfill, recycled to the coke ovens for incineration, or land applied.

Additional solids captured by roughing clarifiers and sand filters proposed for recycle water systems within the integrated and non-integrated steelmaking facilities (blast furnace, sinter plant, BOF, vacuum degasser, continuous caster, hot forming mill) will account for an additional 1.8 percent of the solids currently being collected in scale pits and classifiers. Data provided in the industry surveys indicates the total annual sludge and scale production from all of these facilities, including stand-alone hot formers, was approximately 500,000 tons/year (dry weight). Solids removal equipment proposed for this rule is expected to remove an additional 9,000 tons per year of dry wastewater treatment sludge.

Sludges generated at steel finishing operations may be classified as hazardous under the Resource Conservation and Recovery Act (RCRA) as either a listed or characteristic waste based on the following information:

- If the site performs electroplating operations, sludge from treatment of electroplating wastewater on site is listed as hazardous waste F006 (40 CFR 260.31).
- If the site mixes electroplating wastewaters or sludges with other wastewaters or sludges generated on site, the resulting mixture would be a hazardous waste under the RCRA "mixture rule." (40 CFR 261.3(a)(2)(iv)).
- If the sludge from wastewater treatment exceeds the standards for the Toxicity Characteristic Leaching Procedure (*i.e.* is hazardous), or exhibits other RCRA-defined hazardous characteristics (*i.e.*, reactive, corrosive, or flammable) it is considered a characteristic hazardous waste (40 CFR 261.24).

Additional federal, state, and local regulations may result in steel finishing

sludges being classified as a hazardous waste.

Based on information collected during site visits and sampling episodes to Iron and Steel operations, the Agency believes that some of the solid waste generated by steel finishing operations would not be classified as hazardous. However, for the purpose of compliance cost estimation, the Agency assumed that all solid waste generated as a result of the technology options would be hazardous. Date provided in the industry surveys indicates the total annual sludge production from all steel finishing operations throughout the industry was approximately 21,000 tons/year (dry weight). Additional sludge generation from finishing operations resulting from this proposed rule is approximately 900 tons/year (dry weight).

C. Energy Requirements

EPA estimates that compliance with this proposed regulation would result in a net increase in energy consumption at Iron and Steel facilities. The maximum estimated increased energy use by subcategory are presented in Table VIII–1. The costs associated with these energy requirements are included in EPA's estimated operating costs for compliance with the proposed rule. The projected increase in energy consumption is primarily due to the incorporation of components such as pumps, mixers, blowers, and fans. the integrated and stand-alone hot forming mills, the added energy requirements are related to recycle systems. Electrical equipment in the recycle system includes sand filters, cooling towers, and recycle pumps to return the treated and cooled water to the process.

TABLE VIII–1.—ADDITIONAL ENERGY REQUIREMENTS BY SUBCATEGORY

Subcategory	Energy required (million kilowatt hours/year)
Cokemaking Operations	21.7
Ironmaking Operations	10.6
Integrated Steelmaking Operations	7.8
Integrated and Stand-Alone Hot ming Operations	170
Non-Integrated Steelmaking and Hot ming Operations	8.4
Steel Finishing Operations	2.0
Other Operations	0.04
Total	220.54

Approximately 3,100,000 million kilowatt hours of electric power were generated in the United States in 1997 (Energy Information Administration, Electric Power Annual 1998 Volume 1, Table A1). Total additional energy needs for all Iron and Steel facilities to comply with this proposed rule correspond to approximately 0.007% of the national energy demand. The increase in energy demand due to the implementation of this proposed rule will in turn cause an air emission impact from the electric power generation facilities. The increase in air emissions is expected to be proportional to the increase in energy requirements.

IX. Options Selected for Proposal

A. Introduction

1. Methodology for Proposed Selection of Regulated Pollutants

EPA selects pollutants for regulation based on the following factors: Applicable Clean Water Act provisions regarding the pollutants subject to each statutory level; the pollutants of concern identified for each subcategory; and co-treatment of compatible wastewaters from different manufacturing operations.

The current regulation requires facilities to maintain the pH between 6.0 and 9.0 at all times. EPA intends to retain this limitation and proposes to codify identical pH limitations for previously unregulated subcategories. EPA also proposes to codify a specific reference to the general exception codified at 40 CFR 401.17, which authorizes excursions from the pH range codified in the applicable effluent limitations guidelines under certain enumerated circumstances. The pH shall be monitored at the point of discharge from the wastewater treatment facility to which effluent limitations derived from this part apply.

EPA selected a subset of pollutants for which to establish numerical effluent limitations from the list of Pollutants of Concern (POC) for each regulated subcategory. Section IV.F discusses EPA's methodology for selecting Pollutants of Concern (POC) and identifies on a subcategory basis the POCs relevant to this proposal. Generally, a chemical is considered as a POC if it was detected in untreated process wastewater at 10 times the minimum level (ML) in more than 10% of the samples.

Monitoring for all pollutants of concern is not necessary to ensure that Iron and Steel wastewater pollution is adequately controlled, since many of the pollutants originate from similar sources, have similar treatabilities, are removed by similar mechanisms, and treated to similar levels. Therefore, it may be sufficient to monitor for one pollutant as a surrogate or indicator of several others.

Regulated pollutants are pollutants for which the EPA would establish numerical effluent limitations and standards. EPA selected a POC for regulation in a subcategory if it meets all the following criteria:

- With the exception of TRC, chemical is not used as a treatment chemical in the selected treatment technology option.
- Chemical is not considered a non-conventional bulk parameter.
- Chemical is not considered as a volatile compound, *e.g.*, generally with Henry's Constant greater than or equal to $1x10^{-4}$.
- Chemical is effectively treated by the selected treatment technology option.
- Chemical is detected in the untreated wastewater at treatable levels in a significant number of samples, *e.g.*, generally 10 times the minimum level at more than 10% of the raw wastewater samples.
- Chemicals whose control through treatment processes would lead to control of a wide range of pollutants with similar properties; these chemicals are generally good indicators of overall wastewater treatment performance.

Based on the methodology described above, EPA proposes to regulate pollutants in each subcategory that will ensure adequate control of a range of pollutants.

a. *Clean Water Act.* The CWA provides for the limitation of conventional, non-conventional and toxic pollutants at the following regulatory levels:

BPT: conventional, non-conventional, toxic
BAT: non-conventional, toxic
NSPS: conventional, non-conventional, toxic
PSES: pass through/interfere or otherwise incompatible with POTW
PSNS: pass through/interfere or otherwise incompatible with POTW
BCT: conventional

b. *Pollutants of Concern.* Depending on the manufacturing processes, the wastewater characteristics vary from operation to operation. The pollutants to be regulated are proposed on a subcategory basis.

c. *Co-Treatment of Compatible Wastewaters.* Wastewaters from certain manufacturing operations are compatible for treatment in a single treatment system. EPA's proposed selection of regulated parameters is designed to foster co-treatment of compatible wastewaters and to discourage co-treatment of wastewaters

which the Agency believes to be incompatible.

Untreated by-product cokemaking process wastewaters contain relatively high concentrations of ammonia, cyanide, phenolic compounds, and several toxic organic compounds including benzene, toluene, xylene and polynuclear aromatic compounds. The chemical composition of those wastewaters is unique within the iron and steel industry, as are the physical/chemical and biological processes typically used to treat them. Consequently, EPA regards cokemaking wastewaters to be incompatible with wastewaters from other subcategories. Therefore, the model technologies EPA proposes and the corresponding limitations are designed to discourage co-treatment with wastewaters from operations in other subcategories.

Process wastewaters from the sintering and blast furnace operations segments of the proposed ironmaking subcategory contain many of the same pollutants (ammonia, cyanide, phenolic compounds, toxic metals and high loadings of suspended solids from wet air pollution control and gas cleaning operations). They are universally co-treated where sinter plants with wet air pollution controls are co-located with blast furnaces. Accordingly, the proposed regulation is structured to facilitate co-treatment and permitting of those wastewaters independent of wastewaters from other subcategories. Likewise, the regulation is structured to allow for co-treatment and cascading of wastewaters from the integrated steelmaking operations (basic oxygen furnaces, vacuum degassing, continuous casting). These wastewaters contain typically the same toxic metals.

Like the current regulation, the proposed regulation is based on the assumption that recycle system blowdowns from hot forming operations are compatible with wastewaters from steelmaking and steel finishing operations. When recycled to a high degree, the remaining volume of hot forming wastewaters can be effectively co-treated for TSS, O&G, lead and zinc with steelmaking and steel finishing wastewaters. Today's proposed regulation would limit the same toxic metals, such as lead and zinc, for carbon and alloy steel hot forming operations, carbon and alloy steelmaking, and steel finishing operations. This approach is intended to facilitate co-treatment and NPDES permitting across subcategories where feasible. EPA has taken the same approach with chromium and nickel for stainless steel hot forming, non-integrated steelmaking, and steel finishing operations. Notwithstanding EPA's consideration of this factor, EPA does not propose to exclude any pollutants from regulation on the theory that they are not amenable to co-treatment.

2. Pollutants Selected for Pretreatment Standards

Unlike direct dischargers whose wastewater will receive no further treatment once it leaves the facility, indirect dischargers send their wastewater to POTWs for further treatment. EPA establishes pretreatment standards for those BAT pollutants that pass through POTWs. Therefore, for indirect dischargers, before proposing pretreatment standards, EPA examines whether the pollutants discharged by the industry "pass through" POTWs to waters of the U.S. or interfere with POTW operations or sludge disposal practices. Generally, to determine if pollutants pass through POTWs, EPA compares the percentage of the pollutant removed by well-operated POTWs achieving secondary treatment with the percentage of the pollutant removed by facilities meeting BAT effluent limitations. A pollutant is determined to "pass through" POTWs when the median percentage removed by well-operated POTWs is less than the median percentage removed by direct dischargers complying with BAT effluent limitations. In this manner, EPA can ensure that the combined treatment at indirect discharging facilities and POTWs is at least equivalent to that obtained through treatment by direct dischargers.

This approach to the definition of pass-through satisfies two competing objectives set by Congress: (1) That standards for indirect dischargers be equivalent to standards for direct dischargers, and (2) that the treatment capability and performance of POTWs be recognized and taken into account in regulating the discharge of pollutants from indirect dischargers. Rather than compare the mass or concentration of pollutants discharged by POTWs with the mass or concentration of pollutants discharged by BAT facilities, EPA compares the percentage of the pollutants removed by BAT facilities to the POTW removals. EPA takes this approach because a comparison of the mass or concentration of pollutants in POTW effluents with pollutants in BAT facility effluents would not take into account the mass of pollutants discharged to the POTW from other industrial and non-industrial sources, nor the dilution of the pollutants in the POTW to lower concentrations from the addition of large amounts of other industrial and non-industrial water.

The primary source of the POTW percent removal data is the "Fate of Priority Pollutants in Publicly Owned Treatment Works" (EPA 440/1–82/303, September 1982), commonly referred to as the "50-POTW Study." This study presents data on the performance of 50 well-operated POTWs that employ secondary biological treatment in removing pollutants. Each sample was analyzed for three conventional, 16 non-conventional, and 126 priority toxic pollutants.

At the time of the 50-POTW sampling program, which spanned approximately 2½ years (July 1978 to November 1980), EPA collected samples at selected POTWs across the U.S. The samples were subsequently analyzed by either EPA or EPA-contract laboratories using test procedures (analytical methods) specified by the Agency or in use at the laboratories. Laboratories typically reported the analytical method used along with the test results. However, for those cases in which the laboratory specified no analytical method, EPA was able to identify the method based on the nature of the results and knowledge of the methods available at the time.

Each laboratory reported results for the pollutants for which it tested. If the laboratory found a pollutant to be present, the laboratory reported a result. If the laboratory found the pollutant not to be present, the laboratory reported either that the pollutant was "not detected" or a value with a "less than" sign (<) indicating that the pollutant was below that value. The value reported along with the "less than" sign was the lowest level to which the laboratory believed it could reliably measure. EPA subsequently established these lower levels as the minimum levels of quantitation (MLs). In some instances, different laboratories reported different MLs for the same pollutant using the same analytical method.

Because of the variety of reporting protocols among the 50-POTW Study laboratories (pages 27 to 30, 50-POTW Study), EPA reviewed the percent removal calculations used in the pass-through analysis for previous industry studies, including those performed when developing effluent guidelines for Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) Manufacturing, Centralized Waste Treatment (CWT), and Commercial Hazardous Waste Combustors. EPA found that, for at least 12 parameters, different analytical minimum levels were reported for different rulemaking studies (10 of the 21 metals, cyanide, and one of the 41 organics).

To provide consistency for data analysis and establishment of removal efficiencies, EPA reviewed the 50-POTW Study, standardized the reported MLs for use in the final rules for CWT and Transportation Equipment Cleaning Industries and for this proposed rule and the Metal Products and Machinery proposed rule. A more detailed discussion of the methodology used and the results of the ML evaluation are contained in the record for today's proposal.

In using the 50-POTW Study data to estimate percent removals, EPA has established data editing criteria for determining pollutant percent removals. Some of the editing criteria are based on differences between POTW and industry BAT treatment system influent concentrations. many toxic pollutants, POTW influent concentrations were much lower than those of BAT treatment systems. many pollutants, particularly organic pollutants, the effluent concentrations from both POTW and BAT treatment systems were below the level that could be found or measured. As noted in the 50-POTW Study, analytical laboratories reported pollutant concentrations below the analytical threshold level, qualitatively, as "not detected" or "trace," and reported a measured value above this level. Subsequent rulemaking studies such as the 1987 OCPSF study used the analytical method nominal "minimum level" (ML) established in 40 CFR Part 136 for laboratory data reported below the analytical threshold level. Use of the nominal minimum level (ML) may overestimate the effluent concentration and underestimate the percent removal. Because the data collected for evaluating POTW percent removals included both effluent and influent levels that were close to the analytical detection levels, EPA devised hierarchal data editing criteria to exclude data with low influent concentration levels, thereby minimizing the possibility that low POTW removals might simply reflect low influent concentrations instead of being a true measure of treatment effectiveness.

EPA has generally used hierarchic data editing criteria for the pollutants in the 50-POTW Study. today's proposal, EPA used the following editing criteria:

(1) Substitute the standardized pollutant-specific analytical minimum level for values reported as "not detected," "trace," "less than [followed by a number]," or a number less than the standardized analytical minimum level,

(2) Retain pollutant influent and corresponding effluent values if the average pollutant influent level is greater than or equal to 10 times the pollutant minimum level (10xML), and

(3) If none of the average pollutant influent concentrations are at least 10 times the minimum level, then retain average influent values greater than or equal to two times the minimum level (2xML) along with the corresponding average effluent values. (In most cases, 2xML will be equal to or less than 20 µg/l.)

EPA then calculates each POTW percent removal for each pollutant based on its average influent and its average effluent values. The national POTW percent removal used for each pollutant in the pass-through test is the median value of all the POTW pollutant specific percent removals.

The rationale for retaining POTW data using the "10xML" editing criterion is based on the BAT organic pollutant treatment performance editing criteria initially developed for the 1987 OCPSF regulation (52 FR 42522, 42545–48; November 5, 1987). BAT treatment system designs in the OCPSF industry typically achieved at least 90 percent removal of toxic pollutants. Since most of the OCPSF effluent data from BAT biological treatment systems had values of "not detected," the average influent concentration for a compound had to be at least 10 times the analytical minimum level for the difference to be meaningful (demonstration of at least 90 percent removal) and qualify effluent concentrations for calculation of effluent limits.

Additionally, due to the large number of pollutants of concern for the Iron and Steel industry, EPA also used data from the National Risk Management Research Laboratory (NRMRL) Treatability Database (formerly called the Risk Reduction Engineering Laboratory (RREL) database) to augment the POTW database for the pollutants which the 50-POTW Study did not cover. This database provides information, by pollutant, on removals obtained by various treatment technologies. The database provides the user with the specific data source and the industry from which the wastewater was generated. each pollutant of concern EPA considered for this proposed rule that was not found in the 50-POTW database, EPA used data from the NRMRL database, using only treatment technologies representative of typical POTW secondary treatment operations (activated sludge, activated sludge with filtration, aerated lagoons). EPA further edited these files to include information pertaining only to domestic or industrial wastewater. EPA used pilot-scale and full-scale data only, and eliminated bench-scale data and data from less reliable references. These and other aspects of the methodology used for this proposal are described in Chapter 11 of the Technical Development Document.

The results of the POTW pass-through analysis for indirect dischargers are discussed in Sections IX.B-H for each subcategory.

3. Issues Related to the Methodology Used to Determine POTW Performance

today's proposal, EPA used its traditional methodology to determine POTW performance (percent removal) for toxic and non-conventional pollutants. POTW performance is a component of the pass-through methodology used to identify the pollutants to be regulated for PSES and PSNS. It is also a component of the analysis to determine net pollutant reductions (for both total pounds and toxic pound-equivalents) for various indirect discharge technology options. However, as discussed in more detail below, EPA is considering revisions to its traditional methodology for determining POTW performance and solicits comments on a variety of methodological changes.

a. *Assessment of Acceptable POTWs.* EPA developed the principle pass-through analysis for today's iron and steel proposal by using data from all 50 POTWs that were part of the 50 POTW Study data base. Some of these POTWs were not operated to meet the secondary treatment requirements at 40 CFR part 133 for all portions of their wastestream. Most POTWs today have secondary treatment or better in place. EPA estimates that as of 1996, POTWs with at least secondary treatment in place service greater than 90 percent of the indirect discharging population. If the POTW removal calculations do not reflect the upgrades and system improvements that have occurred since the time of the 50 POTW Study, they would tend to under-estimate POTW removals. This would result in overestimating the pollutant reductions that are achieved through the regulation of indirect dischargers, thereby making the regulation appear more cost-effective for indirect dischargers than it is.

One partial solution to this methodological issue would be to evaluate individual treatment trains in the 50 POTW Study data base, and include only those treatment trains that achieved compliance with 40 CFR part 133 in the analysis of POTW pollutant removal rates. There were 29 treatment trains that achieved BOD_5 and TSS effluent concentrations between 15 mg/

l and 45 mg/l during the sampling and could potentially be considered reflective of secondary treatment (based on 40 CFR 133.102 limitations of 30 mg/l monthly average and 45 mg/l weekly max for secondary treatment), and an additional 2 treatment trains were either trickling filters or waste stabilization ponds that achieved BOD_5 and TSS effluent concentrations between 40 mg/l and 65 mg/l and could potentially be considered equivalent to secondary treatment pursuant to 40 CFR 133.101(g) (based on 40 CFR 133.105 limitations of 45 mg/l monthly average and 65 mg/l weekly maximum). In addition, 15 treatment trains achieved BOD_5 and TSS effluent concentrations below 15 mg/l each, and could potentially be considered greater than secondary treatment.

Using data from these 46 treatment trains only would omit the worst performers in the 50 POTW Study that are probably not reflective of current performance. It might not fully correct, however, for additional upgrades and optimization that may have occurred over the past two decades.

b. *Assessment of Acceptable Data.* EPA developed the pass-through analysis that is the basis for today's proposal using POTW data editing criteria that are generally consistent with those used for the industry data. Specifically, EPA included only data from POTWs for which influent concentrations were 10 times the analytical minimum (quantitation) level (10xML) if available. If none of the average pollutant influent concentrations are at least 10 times the ML, then EPA retained only data from POTWs for which influent concentrations were 2 times the analytical minimum level. Because it is difficult to achieve the same pollutant reduction (in terms of percent) in a dilute wastestream as in a more concentrated wastestream, EPA believes that a 10 X ML editing criteria may overestimate the percent removals that are calculated for both industry and POTWs in the pass-through analysis.

As a general rule, more POTW data than industry data is eliminated through this editing criteria for the specific pollutants that are being examined. This is not surprising since the pass-through analysis would not even be performed on pollutants generally found at less than 10 times the method minimum level in industry since EPA would, in many cases, not require pretreatment for such low levels of a pollutant. As a result of this imbalance (pollutant influent levels at POTWs being less than pollutant influent levels to industrial pretreatment), EPA believes that it is possible that this editing criteria may bias the pass-through results by over-estimating POTW removals where influent concentrations are generally lower. This would result in underestimating the pollutant reductions that are achieved through the regulation of indirect dischargers thereby making the rule appear less cost-effective than it is. On the other hand, there may be little difference in percent removals across the range of influent concentrations generally experienced by POTWs.

One potential solution to this methodological question would be to include data (for both indirect dischargers and POTWs) even if the influent concentration is not 10 times the analytical minimum level. This solution needs to be considered in context, however, with data handling criteria for effluent measurements of "non-detect" discussed below.

c. *Assessment of removals when effluent is below the analytical method minimum level.* EPA developed the pass-through analysis that is the basis for today's proposal using the analytical method minimum level as the effluent value when the pollutant was not detected in the effluent. This is the approach that is generally used when developing pollutant reduction estimates for the regulation, performing cost-effectiveness calculations, and developing effluent limitations. EPA believes that this methodology may underestimate the performance of the selected technology option for both directs and indirects. Once again, this would result in underestimating the removals estimated for *direct* dischargers, and thereby making the rule appear less cost-effective than it is. indirect dischargers, EPA believes that the overall effect of using the minimum level for non-detect values for both industry and POTW data creates a bias for underestimating POTW removals in comparison to industry removals. This may result in an overestimation of pollutant removals by indirect dischargers, and may make the rule appear more cost-effective than it is. (Note that this problem is minimized by only using data with influent levels exceeding 10 X ML, because a non-detect assures that at least 90 percent of the pollutant has been removed. It is arguably less important that the true removal may be greater than 90 percent, rather than exactly 90 percent. Using a less stringent editing criteria of 2 X ML as discussed above would exacerbate this problem. If the influent were only 2 X ML, then removals greater than 50 percent could never be measured.)

One potential alternative would be to assume a value of one half of the minimum level for effluent values of non-detect. This approach would have to be applied uniformly for the indirect dischargers as well as the POTWs in order for the percent removal calculations to be reasonable.

a more detailed discussion of alternative approaches to the POTW pass-through analysis, see the Technical Development Document, Section X. EPA solicits comment on the significance of each of these methodological issues and the potential alternatives.

4. Determination of Long Term Averages, Variability Factors, and Effluent Limitations Guidelines and Standards

This subsection describes the statistical methodology used to develop long-term averages, variability factors, and limitations for BPT, BCT, BAT, NSPS, PSES, and PSNS. The same basic procedures apply to the calculation of all effluent limitations guidelines and standards for this industry, regardless of whether the technology is BPT, BCT, BAT, NSPS, PSES, or PSNS. simplicity, the following discussion refers only to effluent limitations guidelines; however, the discussion also applies to new source and pretreatment standards.

The proposed limitations for pollutants for each option, as presented in today's notice, are provided as "daily maximums" and "maximums for monthly averages." Definitions provided in 40 CFR 122.2 state that the daily maximum limitation is the "highest allowable 'daily discharge'" and the maximum for monthly average limitation is the "highest allowable average of 'daily discharges' over a calendar month, calculated as the sum of all 'daily discharges' measured during a calendar month divided by the number of 'daily discharges' measured during that month." Daily discharges are defined to be the " 'discharge of a pollutant' measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling."

EPA calculates the limitations based upon percentiles chosen with the intention, on one hand, to accommodate reasonably anticipated variability within the control of the facility and, on the other hand, to reflect a level of performance consistent with the Clean Water Act requirement that these effluent limitations be based on the "best" technologies. The daily maximum limitation is an estimate of the 99th percentile of the distribution of the daily measurements. The maximum for monthly average limitation is an

estimate of the 95th percentile of the distribution of the monthly averages of the daily measurements. The percentiles for both types of limitations are estimated using the products of long-term averages and variability factors.

In the first of two steps in estimating both types of limitations, EPA determines an average performance level (the "long-term average") that a facility with well-designed and operated model technologies (which reflect the appropriate level of control) is capable of achieving. This long-term average is calculated from the data from the facilities using the model technologies for the option. EPA expects that all facilities subject to the limitations will design and operate their treatment systems to achieve the long-term average performance level on a consistent basis because facilities with well-designed and operated model technologies have demonstrated that this can be done. In the second step of developing a limitation, EPA determines an allowance for the variation in pollutant concentrations when processed through well designed and operated treatment systems. This allowance for variance incorporates all components of variability including process and wastewater generation, sample collection, shipping, storage, and analytical variability. This allowance is incorporated into the limitations through the use of the variability factors, which are calculated from the data from the facilities using the model technologies. If a facility operates its treatment system to meet the relevant long-term average, EPA expects the facility to be able to meet the limitations. Variability factors assure that normal fluctuations in a facility's treatment are accounted for in the limitations. By accounting for these reasonable excursions above the long-term average, EPA's use of variability factors results in limitations that are generally well above the actual long-term averages. The data sources, the selection of pollutants and data, and the calculations of pollutant long-term averages and variability factors are briefly described below. More detailed explanations are provided in the technical development document.

EPA recognizes that, as a result of modifications to 40 CFR part 420, some dischargers that consistently meet effluent limitations based on the current regulation may need to improve treatment systems, process controls, and/or treatment system operations in order to consistently meet effluent limitations based on revised effluent limitations guidelines and standards. EPA believes that this consequence is consistent with the Clean Water Act statutory framework, which requires that discharge limitations reflect the best available technology, and that the best available technology should be redefined periodically.

The long-term averages, variability factors, and limitations were based upon pollutant concentrations collected from three data sources: EPA sampling episodes, the 1997 Analytical and Production follow-up survey, and data submitted by industry. When the data from the EPA sampling episodes at a facility met the data editing criteria, EPA used the sampling data and any monitoring data provided by the facility. See Technical Development Document Section 10 for more information.

5. BPT

In general, the BPT technology level represents the average of the best existing performances of plants of various processes, ages, sizes or other common characteristics. Where existing performance is considered uniformly inadequate, BPT may be transferred from a different subcategory or industry. Limitations based upon transfer of technology must be supported by a conclusion that the technology is indeed transferable and a reasonable prediction that it will be capable of meeting the prescribed effluent limits. See *Tanners' Council of America* v. *Train*, 540 F.2nd 1188 (4th Cir. 1976). BPT focuses on end-of-pipe treatment rather than process changes or internal controls, except where the process changes or internal controls are common industry practice.

The cost-benefit inquiry for BPT is a limited balancing, committed to EPA's discretion, which does not require the Agency to quantify the benefits in monetary terms. In balancing costs in relation to effluent reduction benefits, EPA considers the volume and nature of existing discharges expected after the application of BPT, the general environmental effects of the pollutants, and the cost and economic impact of the required pollution controls. When setting BPT limitations, EPA is required under section 304(b) to perform a limited cost-benefit balancing to ensure the costs are not wholly out of proportion to the benefits achieved. See *Weyerhaeuser Company* v. *Costle*, 590 F.2d 1011 (D.C. Cir. 1978).

a. *New Subcategories/Segments.* EPA proposes to promulgate BPT limitations for conventional pollutants (TSS and/or oil & grease) for the following subcategories or segments that have not previously been regulated under part 420: Non-recovery cokemaking; sintering operations with dry air pollution controls; electric arc furnace operations within the Non-Integrated Steelmaking and Hot ming Subcategory; direct reduced iron; forging; and, briquetting. There are no BPT limitations in the current regulation applicable to non-recovery cokemaking, direct reduced iron, forging and briquetting. The current Steelmaking Subcategory BPT regulation requires "no discharge of pollutants" for semi-wet electric arc furnace operations (§ 420.43(a)) and allows discharges for wet electric arc furnace operations (§ 420.43(c)). Under the proposed subcategorization scheme, there are no wet electric arc furnace operations within the Non-Integrated Steelmaking and Hot ming Subcategory. The current BPT regulation does not specifically cover sintering operations with dry air pollution controls.

b. *Existing Subcategories/Segments.* manufacturing operations subject to current BPT regulations (i.e., all iron and steel operations regulated under the current part 420 and electroplating operations regulated currently under part 433 but proposed for regulation under the revised Part 420), the Agency at this time is not proposing to revise the BPT limitations for TSS and oil & grease. Because EPA is proposing to establish a revised subcategorization schedule for part 420 by consolidating several former subparts and creating new ones, EPA has presented the current part 420 BPT limitations for each proposed subpart in the form of segments corresponding to the subcategorization schedule that EPA proposes to replace. With respect to continuous electroplating operations, which are currently regulated under part 433 (Metal Finishing), but which EPA proposes to regulate under part 420 (Iron & Steel), EPA presents BPT limitations for the conventional parameters TSS and oil and grease in proposed subpart F, §§ 420.62(a)(9) and (b)(9) based on the limitations as currently codified in part 433 for those operations.

The Agency is also considering an alternative approach that would simplify the regulation and ease implementation of BPT limitations in the NPDES permit program. The Agency solicits comment on this alternative approach, which is discussed below. The alternative is also presented in the Technical Development Document for this proposed regulation.

j. *Alternative approach: Codify BPT limitations as the TSS and O&G Concentrations used to develop the Current part 420 Regulation.* The Agency is aware that incorporating the current BPT limitations into the new

subcategorization structure of the proposed regulation is complex and will be difficult to implement because the BPT limitations are unchanged and reflect a different subcategorization schedule. If the regulation were promulgated as proposed, permit writers and the industry would be required to implement the existing part 433 BPT limitations, existing part 420 BPT limitations for 12 subcategories and more than 50 segments, as well as the proposed BAT limitations for seven subcategories with far fewer segments. As a result, permit writers would need to identify process units using different characteristics for BPT than they would use for BAT and other technology levels. Therefore, EPA is considering an alternative approach that EPA believes would ease implementation of BPT limitations in the NPDES permit program.

Under this alternative approach, EPA would replace the current mass-based BPT limitations for TSS and oil & grease with corresponding concentration-based limitations for TSS and oil & grease. The concentration-based BPT limitations would be the treated effluent concentrations used to develop the current regulation for all operations EPA proposes to continue to regulate under the revised part 420 regulations. (Thus, this option would not apply to Cold Worked Pipe & Tube operations currently subject to part 420, but which EPA proposes to regulate under Part 438. Those concentrations are shown as the daily maximum and maximum monthly average TSS and oil & grease concentrations (mg/L) for the 12 subcategories of the existing regulation (see Table I–1 (pages 13 to 17), Vol. I of the "Development Document for Effluent Limitations Guidelines for the Iron and Steel Manufacturing Point Source Category," (EPA 440/1–82–024; May 1982)). electroplating operations regulated currently under part 433, the corresponding BPT concentration limitations would be either those listed at part 433, or those for the steel finishing operations listed in Table I–1 referenced above.

Under this option, the TSS and oil & grease concentrations listed in the 1982 development document would be codified as BPT limitations in the seven subcategories proposed for this regulation. Because the TSS and oil & grease concentrations used to develop the 1982 regulation are the same for operations within each of the seven subcategories for this proposed regulation, the structure of the revised regulation would be streamlined and implementation would be much simpler. example, permit writers and the industry would not have to contend with classifying hot forming and steel finishing operations under both the more complicated subcategory and segment schedule from the current regulation and the less complicated subcategory and segment schedule from this proposed regulation.

Under this option, the permit writers would develop NPDES permit effluent limitations by first applying the corresponding BAT limitations for toxic and non-conventional pollutants for each internal or external outfall discharging process wastewaters. Mass effluent limitations for TSS and oil & grease would be developed by applying the respective concentration-based BPT effluent limitations guidelines to a reasonable measure of actual process wastewater discharge flow, taking into account process wastewaters regulated directly by Part 420 and those process wastewaters that may be unregulated by part 420 (see proposed regulation at § 420.03(f)). As with the BAT limitations, the Agency intends that only the mass limitations derived for TSS and oil & grease as described above be included in NPDES permits.

Depending upon site-specific circumstances, this option could result in either more or less stringent limitations for TSS and oil & grease than would be derived from the current BPT limitations. example, if a mill has process wastewater discharge flows lower than the model BPT production normalized flows from the 1982 regulation and no unregulated process wastewaters, the resulting TSS and oil & grease permit limitations would be more stringent in proportion to the amount of the lower discharge flow. On the other hand, if the mill had higher process wastewater flows or a substantial volume of unregulated process wastewaters, the resultant effluent limitations would be higher in proportion to the higher discharge flow. The Agency believes that in many instances the volume of regulated process wastewaters currently discharged or that will be discharged to attain compliance with the BAT limitations will be somewhat less than the model BPT flow rates. Consequently, on balance, EPA expects that the resulting NPDES permit effluent limitations for TSS and oil & grease would be somewhat more stringent but in the range of those derived from the current BPT limitations.

Under this approach, as a practical matter, there would be no additional costs of compliance to achieve the resulting BPT TSS and oil & grease effluent limitations. Incremental investment costs and incremental operation and maintenance costs were considered, where appropriate, as costs to achieve the BAT limitations. In addition, EPA would not expect facilities to incur additional monitoring costs associated with concentration-based BPT limitations because facilities already monitor for these pollutants under the current regulation, and EPA does not propose to establish any new monitoring requirements for the conventional pollutants. Nonetheless, for the purposes of calculating cost per pound of conventional pollutants removed, EPA has estimated both the costs associated with implementing new BPT technologies (in this case, identical to the proposed BAT technologies, even though as a practical matter, they are already subsumed in the BAT costs), as well as the total pounds removed by those technologies. (These totals reflect only the subcategories and segments for which EPA is considering revising BPT limitations.) The total estimated costs are $53.8 million (1997 pretax total annualized costs) and the total estimated removals are 30.3 million pounds of conventional pollutants. EPA believes these costs to be reasonable in relation to the effluent reduction benefits. If EPA were to adopt this alternative approach, EPA would revise BCT limitations to reflect the new BPT levels because nothing more stringent that those levels appears to pass the BCT cost test.

EPA solicits comments on this alternative approach, which EPA believes would ease the implementation of the BPT limitations and would reflect current manufacturing, waste management, and wastewater treatment practices. EPA also solicits other options for consideration.

6. BCT

The BCT methodology, promulgated in 1986 (51 FR 24974), discusses the Agency's consideration of costs in establishing BCT effluent limitations guidelines. EPA evaluates the reasonableness of BCT candidate technologies (those that are technologically feasible) by applying a two-part cost test:

(1) The POTW test; and

(2) The industry cost-effectiveness test.

In the POTW test, EPA calculates the cost per pound of conventional pollutant removed by industrial dischargers in upgrading from BPT to a BCT candidate technology and then compares this cost to the cost per pound of conventional pollutant removed in upgrading POTWs from secondary treatment. The upgrade cost to industry

must be less than the POTW benchmark of $0.25 per pound (in 1976 dollars).

In the industry cost-effectiveness test, the ratio of the incremental BPT to BCT cost divided by the BPT cost for the industry must be less than 1.29 (*i.e.*, the cost increase must be less than 29 percent).

In developing BCT limits, EPA considered whether there are technologies that achieve greater removals of conventional pollutants than proposed for BPT, and whether those technologies are cost-reasonable according to the prescribed BCT tests. EPA identified no technologies that can achieve greater removals of conventional pollutants than the BPT standards that also pass the BCT cost-reasonableness tests. Accordingly, EPA proposes to establish BCT effluent limitations equal to the current BPT limitations.

7. Consideration of Statutory Factors for BAT, PSES, NSPS and PSNS Technology Options Selection

Based on the record before it, EPA has determined that each proposed model technology is technically available. EPA is also proposing that each is economically achievable for the segment to which it applies. Further, EPA has determined, for the reasons set forth in Section VIII, that none of the proposed technology options has unacceptable adverse non-water quality environmental impacts. Finally, EPA has determined that each proposed technology option achieves greater pollutant removals than any other economically achievable technology considered by EPA and, for that reason, also represents the best technology among those considered for the particular segment. EPA also considered the age, size, processes, and other engineering factors pertinent to facilities in the proposed segments for the purpose of evaluating the technology options. None of these factors provides a basis for selecting different technologies than those EPA proposes to select as its model BAT and PSES technologies for the segments within each subcategory, or if EPA does not propose segmentation, for the subcategory itself.

In selecting its proposed NSPS technology for these segments and subcategories, EPA considered all of the factors specified in CWA section 306, including the cost of achieving effluent reductions. (These findings also apply to the proposed PSNS for these segments.) The proposed NSPS technologies for these segments are presently being employed at facilities in each segment of these subcategories. Therefore, EPA has concluded that such costs do not present a barrier to entry. The Agency also considered energy requirements and other non-water quality environmental impacts for the proposed NSPS options and concluded that these impacts were no greater than for the proposed BAT technology options for the particular segment and are acceptable. EPA therefore concluded that the NSPS technology bases proposed for these segments constitute the best available demonstrated control technology for those segments.

B. Cokemaking

After considering all of the technology options described in the Section V.C in light of the factors specified in section 304(b)(2)(B) and 306 of the Clean Water Act, as appropriate, EPA proposes to select the technology options identified below as BAT, PSES, NSPS, and PSNS for the by-product and non-recovery cokemaking segments of the proposed Cokemaking Subcategory.

1. By-Product Cokemaking

a. *Regulated Pollutants.* i. *BAT.* the By-Product segment of this subcategory, EPA proposes establishing BAT limitations for ammonia-N, total cyanide, phenol, benzo(a)pyrene, thiocyanate, naphthalene, mercury, selenium, and Total Residual Chlorine (TRC). Except for TRC, these pollutants are characteristic of cokemaking wastewaters. TRC is an indicator of post-alkaline chlorination residual concentration of chlorine. Facilities would not need to meet the TRC limit if they certify to the permitting authority that they do not employ alkaline chlorination in their wastewater treatment. These proposed regulated pollutants are key indicators of the performance of the ammonia distillation, biological treatment, and alkaline chlorination processes, which are the key components of the complex model BAT and NSPS treatment systems for by-product coke plants.

ii. *PSES.* EPA proposes to regulate the following parameters under PSES: ammonia-N, total cyanide, thiocyanate, selenium, phenol, and naphthalene. Using the methodology described in Section IX.A.2, EPA has determined that each of these pollutants passes through. EPA notes that ammonia-N is a key indicator of the performance of the PSES and PSNS treatment systems because it reflects the performance of the ammonia stills, which not only control ammonia-N, but also acid gasses (HCN, H_2S) and volatile toxic organic pollutants (benzene, toluene, xylenes), some portions of which would otherwise be lost in coke plant and municipal sewer systems and in biological processes at POTWs. EPA has determined that the other pollutants EPA proposes to regulate at BAT (benzo(a)pyrene and mercury) do not pass through.

iii. *NSPS.* NSPS limitations, EPA proposes to regulate the same pollutants as those for BAT, with the addition of TSS and oil and grease (measured as HEM).

iv. *PSNS.* EPA proposes to regulate the same parameters as under PSES for this segment.

b. *Technology Selected.* i. *BAT.* The Agency is proposing to establish BAT–3 for the by-products recovery segment of the cokemaking subcategory. The treatment technologies that serve as the basis for the development of the proposed BAT limits are: Tar removal, equalization, ammonia stripping, temperature control, equalization, single-stage biological treatment with nitrification, and alkaline chlorination. EPA estimates that only one facility will close as a result of BAT–3. EPA has determined that this option is economically achievable and cost effective.

As presented in Section V.C.1, four BAT options were under consideration. Under BAT–1, water usage would be reduced by 1.6 million gallons per year from current levels and the removal toxic and non-conventional pollutants would increase by 14% over those levels. BAT–2 results in no further reduction in flow beyond that to be achieved by BAT–1, but does result in the additional removal of 17% of the total cyanide from direct discharging cokemaking wastestreams through the use of cyanide precipitation. BAT–3 also results in no further reduction in flow beyond that to be achieved by BAT–1, but does result in the additional removal of 50% of the total cyanide from direct discharging cokemaking wastestreams beyond BAT–1 levels through the use of alkaline chlorination. BAT–4 results in no further reduction in flow beyond that to be achieved by any of the BAT options, and does not lead to significant additional pollutant removal beyond that to be achieved by BAT–3.

BAT–1 removes 56,300 toxic pound equivalents over current discharge at an annualized compliance cost of $0.9 million (1997$). BAT–2 removes an additional 26% of toxic pound equivalents over BAT–1, at an additional annualized compliance cost of $3.3 million (1997$). Neither of these options results in any facility closures, so both are considered economically achievable. However, EPA is not proposing either of these options,

because BAT–3 removes even more pollutants of concern at a cost that is also economically achievable.

EPA also evaluated BAT–4 as a basis for establishing BAT more stringent than the level of control being proposed today. As was the case for BAT–3, EPA estimates that only one facility would close as a result of BAT–4, so EPA has determined that this option is economically achievable. However, EPA is not proposing to establish BAT limits based on BAT–4 because it determined that BAT–3 achieves nearly equivalent reductions in pound-equivalents for much less cost. EPA has determined that BAT–3 would remove 0.43 million pounds of priority and non-conventional pollutants per year at a total annualized cost of $8.6 million (1997$). In contrast, BAT–4 would remove the same quantity of pollutants at a total annualized cost of $15.2 million (1997$). In view of the fact that BAT–4 appears to achieve no additional pollutant removals and yet would prompt additional total annualized costs of $6.6 million, EPA has determined that BAT–3, not BAT–4, is the "best available" technology economically achievable for the by-products recovery segment of the cokemaking subcategory.

ii. *PSES.* EPA is co-proposing two sets of technologies to serve as the bases for the development of the proposed PSES limits: (1) Tar removal, equalization, ammonia stripping, temperature control and equalization, and (2) tar removal, equalization, ammonia stripping, temperature control, equalization, and single-stage biological treatment with nitrification. These are identified as options PSES–1 and PSES–3 in Section V.C., respectively, and provide controls for each pollutant that EPA has determined pass through. EPA estimates that no facilities would close as a result of compliance with either of these options. EPA has concluded that these options are economically achievable.

Under Option PSES–1, EPA estimates an additional 3,400 toxic pound equivalents would be removed per year above the current amount, at an additional annualized compliance cost of $0.3 million (1997$). Under Option PSES–2, EPA estimates an additional 2,200 toxic pound equivalents would be removed per year above PSES–1, at an additional annualized compliance cost of $1.9 million (1997$). Under PSES–3, EPA estimates an additional 42,900 toxic pound equivalents would be removed per year above PSES–2, at an additional annualized compliance cost of $2.8 million (1997$). Under PSES–4, EPA estimates an additional 2,900 toxic pound equivalents would be removed per year above PSES–3, at an additional annualized compliance cost of $3.5 million (1997$). Based on consideration of the additional pollutant removals achieved by PSES–4 for indirect dischargers in this subcategory and the additional costs needed to achieve them, EPA has determined that PSES–3 is the best technology for the by-products recovery segment of the cokemaking subcategory.

Although EPA considers PSES–3 to be the best among the PSES options EPA considered, EPA is also co-proposing PSES–1 because it may provide a lower cost means of obtaining similar pollutant reductions. EPA plans to further evaluate setting PSES equal to BAT–3 between proposal and promulgation of this rule.

iii. *NSPS.* The treatment technologies that serve as the basis for the development of the proposed NSPS are the same as Option BAT–3. the reasons set forth above for BAT in its comparison of BAT–3 and BAT–4, EPA has determined that BAT–3 is the "best" demonstrated technology for new sources in the by-products recovery segment of the cokemaking subcategory.

iv. *PSNS.* The treatment technologies that serve as the basis for the development of the proposed PSNS are the same as Option PSES–3. the reasons discussed above, EPA proposes PSES–3 as the basis for its PSNS for this segment. The Agency also solicits comment on the second option discussed under PSES for this segment, identified as option PSES–1. EPA plans to further evaluate setting PSNS equal to BAT–3 between proposal and promulgation of this rule.

2. Non-recovery Cokemaking

Since the non-recovery cokemaking process does not generate any process wastewater, EPA proposes no discharge of process wastewater pollutants to waters of the U.S. for BAT/PSES/NSPS/PSNS for all categories for this segment.

C. Ironmaking

After considering all of the technology options described in the Section V.C in light of the factors specified in section 304(b)(2)(B) and 306 of the Clean Water Act, as appropriate, EPA proposes to select the technology options identified below as BAT, PSES, NSPS, and PSNS for the blast furnace and sintering segments of the proposed Ironmaking Subcategory.

1. Blast Furnace

a. *Regulated Pollutants.* i. *BAT.* EPA proposes to regulate the following parameters under BAT: Ammonia-N, total cyanide, phenol, lead, zinc, and total recoverable chlorine (TRC). Ammonia-N and total cyanide are regulated in the current part 420 and are again proposed for regulation. These pollutants are characteristic of blast furnace ironmaking wastewaters and are key indicators of the performance of the alkaline chlorination process. Phenol is proposed for regulation in place of total phenols, because EPA judged phenol to be a better indicator of treatment performance of ironmaking wastewater than total phenols. EPA proposes to limit TRC to ensure residual concentrations of chlorine are kept to a minimum to avoid effluent toxicity. Facilities would not need to meet the TRC limit if they certify to the permitting authority that they do not employ alkaline chlorination in their wastewater treatment. EPA proposes to limit lead and zinc because they are the principal metals present and will track performance of the metals precipitation model BAT system with respect to other metals identified as pollutants of concern.

ii. *PSES.* EPA proposes to regulate the following parameters under PSES: ammonia-N, lead, and zinc. Using the methodology described in Section IX.A.2, EPA has determined that each of these pollutants passes through. EPA has determined that the other pollutants EPA proposes to regulate at BAT (total cyanide and phenol) do not pass through.

iii. *NSPS.* In addition to the parameters listed under BAT for this segment, EPA proposes to regulate TSS and oil & grease (measured as HEM).

iv. *PSNS.* EPA proposes to regulate the same parameters under PSNS for this segment as it does for PSES.

b. *Technology Selected.* i. *BAT.* The treatment technologies that serve as the basis for the development of the proposed BAT limits for the ironmaking subcategory (Blast Furnace and Sintering Segments) are: solids removal with high-rate recycle and metals precipitation, alkaline chlorination, and mixed-media-filtration for the blowdown wastewater. This is identified as BAT–1 in Section V.C. Under BAT–1, water usage would be reduced by 5% over current levels, and total loadings of toxic and non-conventional pollutants would be reduced by 68%. EPA estimates that no facilities would close as a result of BAT–1. EPA has determined that this option is economically achievable. EPA did not pursue additional, more stringent options because all significant POCs in the effluent after application of BAT–1 system are projected to exist at levels too low to be further treated by any other add-on technology. Therefore, EPA proposes BAT–1 as the technology

basis for BAT for the ironmaking subcategory.

ii. *PSES.* The treatment technologies that serve as the basis for the development of the proposed PSES limits are: solids removal with high-rate recycle and metals precipitation for the blowdown wastewater. This is identified as Option PSES–1 in Section V.C. This option provides controls for each pollutant that EPA has determined passes through for this segment. EPA has determined that this option is economically achievable. Although BAT–1 achieves additional removal of ammonia-N through alkaline chlorination, EPA has found that all POTWs currently receiving wastewater from ironmaking operations are achieving ammonia removal comparable to that achieved by BAT–1. Therefore, EPA proposes PSES–1 as the technology basis for PSES for the ironmaking subcategory.

EPA is proposing regulatory flexibility that would allow indirectly discharging ironmaking operations to not have to meet the pretretment standards for ammonia-N if the facility certifies to the pretreatment control authority under 40 CFR 403.12 that they discharge to POTWs with the capability, when considered together with the indirect discharger's removals, to achieve removals at least equivalent to those expected under BAT for ammonia-N.

EPA plans to further evaluate setting PSES equal to BAT–1 between proposal and promulgation of this rule.

iii. *NSPS.* The treatment technologies that serve as the basis for the development of the proposed NSPS limits are the same as Option BAT–1 for this segment. As was the case for BAT, EPA did not pursue additional, more stringent options for NSPS because all significant POCs in the effluent after application of BAT–1 system are projected to exist at levels too low to be further treated by this or any other add-on technology. Therefore, EPA proposes BAT–1 as the technology basis for NSPS for the ironmaking subcategory because EPA believes it represents the best demonstrated technology for this subcategory.

iv. *PSNS.* The treatment technologies that serve as the basis for the development of the proposed PSNS limits are the same as Option PSES–1 for this segment. the reasons set forth above for NSPS, EPA proposes PSES–1 as the basis for PSNS for this subcategory.

EPA is proposing regulatory flexibility that would allow indirectly discharging ironmaking operations to not have to meet the pretreatment standards for ammonia-N if the facility certifies to the pretreatment control authority under 40 CFR 403.12 that they discharge to POTWs with the capability, when considered together with the indirect discharger's removals, to achieve removals at least equivalent to those expected under BAT for ammonia-N.

EPA plans to further evaluate setting PSNS equal to BAT–1 between proposal and promulgation of this rule.

2. Sintering

a. *Regulated Pollutants.* Because several congeners of dioxins have been shown to cause adverse health effects at concentration levels far below those of most pollutants, EPA proposes to regulate 2,3,7,8-tetra-chloro-dibenzo furan (TCDF). EPA selected this congener because sampling data indicates that it is present in post-treatment sinter plant wastewater, and because removal of this pollutant is expected to correlate strongly with removal of other dioxin congeners, due to their similar chemical structures. EPA's sampling program did not indicate that there are measurable quantities of 2,3,7,8-tetra-chloro-dibenzo dioxin (TCDD) in post-treatment sinter plant wastewater. The proposed limit would be expressed as less than the minimum level ("<ML") or ten parts per quadrillion using current analytical methods. The "ML" is an abbreviation for the minimum level of the analytical method for TCDF specified in 40 CFR part 136. EPA proposes to require compliance monitoring at internal outfalls (after treatment of sinter plant wastewaters separately or in combination with blast furnace wastewaters), i.e., before any additional process or non-process flows are combined with the sinter plant wastewater. This regulatory approach is similar to that used in the regulation of the bleached paper grade plant effluents at bleached kraft pulp and paper mills (see 40 CFR 430.24(e)). EPA expects to gather additional information on dioxin and furan concentrations in sinter plant effluent and on this proposed regulatory approach through the public comment process. EPA also is willing to speak with interested parties during the comment period to ensure that EPA considers the views of all stakeholders and uses the best possible data upon which to base a decision for the final regulation.

i. BAT

EPA proposes to regulate the following parameters under BAT: ammonia-N, total cyanide, phenol, lead, zinc, TRC and 2,3,7,8 TCDF. EPA proposes to regulate ammonia-N, total cyanide and phenol in order to track performance of the BAT model treatment technology, which includes alkaline chlorination. EPA proposes to regulate TRC in order to ensure residual concentrations of chlorine are kept to a minimum to avoid effluent toxicity. Facilities would not need to meet the TRC limit if they certify to the permitting authority that they do not employ alkaline chlorination in their wastewater treatment. EPA proposes to regulate lead and zinc because they are the principal metals present and will track performance of the metals precipitation model BAT system with respect to other metals identified as pollutants of concern.

ii. PSES

EPA proposes to regulate the following parameters under PSES: ammonia-N, lead, zinc, and 2,3,7,8 TCDF. Using the methodology described in Section IX.A.2, EPA has determined that each of these pollutants passes through. EPA has determined that the other pollutants EPA proposes to regulate at BAT (cyanide and phenol) do not pass through.

iii. NSPS

In addition to the parameters listed under BAT for this segment, EPA proposes to regulate TSS and oil & grease (measured as HEM).

iv. PSNS

EPA proposes to regulate the same parameters under PSNS for this segment as it does for PSES.

b. *Technologies Selected.*

i. BAT/PSES/NSPS/PSNS

See discussions under "Blast Furnace" above.

D. Integrated Steelmaking

After considering all of the technology options described in the Section V.C in light of the factors specified in section 304(b)(2)(B) and 306 of the Clean Water Act, as appropriate, EPA proposes to select the technology options identified below as BAT, PSES, NSPS, and PSNS for the proposed Integrated Steelmaking Subcategory.

1. Regulated Pollutants

a. *BAT/PSES/NSPS/PSNS.* EPA proposes to regulate lead and zinc under BAT/PSES/NSPS/PSNS because they are the principal metals present and because they are good indicators of the performance of the metals precipitation component of the proposed model technology. Using the methodology described in Section IX.A.2, EPA has determined that both lead and zinc pass through.

2. Technology Selected

a. *BAT/NSPS/PSES/PSNS.* The treatment technologies that serve as the basis for the development of the proposed BAT/NSPS/PSES/PSNS limits are: solids removal and high rate recycle, with metals precipitation for blowdown wastewater. Cooling towers are also part of the model technology for process wastewater associated with vacuum degassing or continuous casting. This option is identified as BAT–1 in Section V.C.

Under BAT–1, water usage can be reduced by 83% over current levels, and total loadings of toxic and non-conventional pollutants can be reduced by 66%. EPA estimates that no facilities would close as a result of BAT–1. EPA has determined that this option is economically achievable. EPA did not pursue other options because all significant POCs in the effluent after application of BAT–1 system are projected to exist at levels too low to be further treated by any other add-on technologies. Therefore, EPA proposes BAT–1 as the technology basis for BAT for the proposed Integrated Steelmaking subcategory.

the same reason, EPA proposes BAT–1 as the basis for PSES for this subcategory. This option provides controls for each pollutant that EPA has determined passes through for this subcategory.

As was the case for BAT and PSES, EPA did not pursue additional, more stringent options for NSPS and PSNS because all significant POCs in the effluent after application of BAT–1 system are projected to exist at levels too low to be further treated by any other add-on technology. Therefore, EPA proposes BAT–1 as the technology basis for NSPS and PSNS for the integrated steelmaking subcategory because EPA believes it represents the best demonstrated technology for this subcategory.

E. Integrated and Stand Alone Hot ming

After considering all of the technology options described in the Section V.C in light of the factors specified in section 304(b)(2)(B) and 306 of the Clean Water Act, as appropriate, EPA proposes to select the technology options identified below as BAT, PSES, NSPS, and PSNS for the carbon and allow segment and the stainless steel segment of the proposed Integrated and Stand Alone Hot ming Subcategory.

1. Carbon and Alloy

a. *Regulated Pollutants.* i. *BAT.* EPA is proposing to regulate the following pollutants: lead and zinc.

ii. *PSES/PSNS.* See discussion under "Technology Selected—PSES/PSNS" below.

iii. *NSPS.* EPA is proposing regulating the same pollutants as for BAT, with the addition of TSS and oil & grease (measured as HEM).

b. *Technology Selected.* i. *BAT.* EPA is proposing two different BAT approaches today because of the uncertainty regarding the economic achievability of the preferred option in April 2002 when EPA is scheduled to take final action on this proposal.

BAT Option A: The treatment technologies that serve as the basis for the development of BAT Option A are: scale pit with oil skimming, roughing clarifier, cooling tower with high rate recycle and mixed-media filtration of blowdown. As required by CWA section 301(b)(2), each existing direct discharger subject to this proposed BAT would be subject to the corresponding limitations as soon they are incorporated into the facility's NPDES permit. EPA believes the BAT Option A is economically achievable because the facility level analysis projects no facility closures. The firm level analysis does, however, project that one or more firms may experience financial "distress" as a result of the aggregate compliance costs of the rule, including the hot forming segment compliance costs. Financial "distress" may indicate the loss of financial independence, sale of assets or the likelihood of bankruptcy. In this case, the facility level analysis indicates the facilities would be expected to remain viable postcompliance and would possess value as continuing concerns. Therefore, EPA expects that the firm(s) would respond to financial "distress" through the sale of assets, rather than through declaration of bankruptcy, which would be far more disruptive in terms of economic impacts for the subcategory as a whole. example, job losses would be more limited in the event of the sale of a facility owned by a distressed firm rather than a bankruptcy induced closure and any community impacts associated with job losses would likewise be less severe. The Agency believes that this projected level of financial distress is not significant and therefore believes that Option A is economically achievable for the segment as a whole.

BAT Option B: As discussed in more detail above in Section V.C.4.b, Section VI.D.4, and Section VI.F, EPA has estimated that it could cost affected facilities $ 21.2 million in total annualized costs to comply with BAT limitations based on the proposed BAT model technology, which includes high rate recycle. When those costs are considered together with other costs that EPA estimates firms will incur if this rule is promulgated as proposed, EPA has predicted that the cumulative costs of this rule could jeopardize the corporate financial health of one or more firms. See Section VI.F. While EPA considers those possible impacts to be acceptable for the purposes of today's proposal, EPA is also aware that new information received after this proposal, including information regarding changes in the financial health of the industry due to changes in the national economy and foreign trade, might lead EPA to reach a different conclusion when EPA takes final action on this proposal in April 2002. Therefore, in addition to proposed BAT Option A for the carbon and alloy segment of the Integrated and Stand Alone Hot ming subcategory, EPA is proposing a second BAT approach for this segment. EPA is considering BAT limitations for this segment based on BAT Option B in the event it determines that BAT Option A is not economically achievable for the segment as a whole at the time it takes final action on today's proposal. The proposed alternative described below is designed to minimize possible adverse economic impacts of the primary proposed BAT option for this segment.

Like the BAT option A, BAT Option B includes high rate recycle. (Indeed, the technology basis for BAT Option A and the proposed alternative is identical.) The difference between BAT Option A and BAT Option B involves the amount of time that facilities in the segment would have to achieve the BAT limitations based on that technology. Under BAT option A, all direct discharging facilities covered by the carbon and alloy segment of the Integrated and Stand Alone Hot ming subcategory would be subject to the BAT limitations as soon as they are placed in the facilities' NPDES permit. See sections 301(b)(2)(C), (D) and (F) of the Clean Water Act. Although it is common practice for permit writers to issue administrative orders concurrent with issuing permits based on a new or revised effluent guideline, the decision to do so is left to the permit writers' enforcement discretion. Therefore, EPA cannot assume the availability of such relief when it estimates the costs and impacts of this proposed rule. Under BAT Option B, in contrast, all facilities within the carbon and alloy segment of the Integrated and Stand Alone Hot ming subcategory could receive additional time to achieve the limitations based on the proposed BAT technology for that segment. If EPA ultimately determines in April 2002 that

BAT Option A is not economically achievable for the segment as a whole, it may decide to take final action based on BAT Option B.

Under BAT Option B, EPA would codify BAT limitations that consisted of three separate components. Together, the three components would comprise BAT for the carbon and alloy segment of the Integrated and Stand Alone Hot ming subcategory and, operating incrementally, would become progressively more stringent over time. Although applied in stages, the limitations would represent a continuum of progress that all facilities under BAT Option B would be required to achieve by April 30, 2007. Under the first component, consisting of "stage 1" BAT limitations, each facility subject to this segment would be immediately subject to limitations based on the mill's existing effluent quality for the regulated pollutants, or its current technology-based permit limits for those pollutants, whichever are more stringent. The second component would consist of enforceable interim milestones developed on a best professional judgment basis by the permitting authority to reflect reasonable interim milestones toward achievement of the ultimate BAT limitations. Under the third component, consisting of the ultimate, or "stage 2", BAT limitations, each facility by April 30, 2007 would be subject to limitations that are based on the BAT technology proposed for this segment (*i.e.*, scale pit with oil skimming, roughing clarifier, filtration, high rate recycle and mixed-media filtration of blowdown).

With respect to the "stage 1" limitations, EPA intends that the permitting authority would express that limitation in numeric form for each facility on a case-by-case basis. The "stage 1" limitations thus will be numeric values on the regulated pollutants, that, for each pollutant, are equivalent to the more stringent of either the technology-based limit on that pollutant in the facility's last permit or the facility's current effluent quality with respect to that pollutant. Existing effluent quality for the regulated pollutants would be determined at the internal monitoring point where the wastewater containing those pollutants leaves the hot forming wastewater treatment plant. These "stage 1" BAT limits would represent the first step in the BAT continuum for BAT Option B and would be enforceable against the facility as soon as they are placed in the facility's NPDES permit. The purpose of the "stage 1" BAT limits would be to ensure that, at a minimum, existing effluent quality is maintained while the facility moves toward achieving the "stage 2" BAT limitations that are based on the model BAT technologies for this segment. Allowing a facility to degrade its effluent quality during development and installation of the model BAT technologies would be inconsistent with the statute's direction that BAT limitations achieve reasonable further progress toward the Clean Water Act's national goals. EPA's "stage 1" limitations, thus, would be intended to capture continuously improving effluent quality.

Because the "stage 1" limitations would reflect a level of technology that the facility is already employing or that was previously determined to be BAT for that facility, EPA would be able to conclude at the time of promulgation that the technology bases for the "stage 1" limits are both technically available and economically achievable. If EPA were to promulgate such limitations, EPA would also consider whether they would result in any adverse non-water quality environmental impacts, and would also consider all of the other statutory factors specified in CWA section 304(b)(2)(B) and 306. EPA believes that "stage 1" limitations could be the "best" available technology economically achievable for facilities in the segment if the record shows that they allow those facilities to focus their resources on the research, development, testing, and installation of the technologies ultimately needed to achieve the "stage 2" limitations, which are based on model BAT technology for the subpart. "Stage 1" limitations thus would reflect "reasonable further progress toward the national goal of eliminating the discharge of all pollutants," as called for by CWA section 301(b)(2)(A), and could reasonably represent the appropriate first rung of the segment BAT ladder, if EPA were to determine that the model technology is not economically achievable at the time of promulgation.

The second component would consist of interim milestone limitations. Under this component, facilities would be required to meet enforceable requirements determined by the permitting authority based on best professional judgment; these milestones would be expressed as narrative or numeric conditions in the facility's NPDES permit and would reflect each step in a facility's progress toward achievement of the ultimate, "stage 2," performance requirements.

With respect to "stage 2," EPA would promulgate limitations that represent the performance that can be achieved using the model BAT technology for the segment. Because the model technology for BAT Option B's "stage 2" limitations would be the same as those proposed for BAT Option A, the calculated limitations would be identical as well. The difference between the BAT Option A and BAT Option B is that the facilities in this segment would not be required to be subject to those limitations upon promulgation. Rather, the facilities would be subject to the "stage 2" limitations at some later date specified in the regulation by EPA, *e.g.*, April 30, 2007. That date would represent the date by which EPA determines—based on the administrative record at the time of promulgation—that the model technology would be economically achievable for the segment as a whole. Thus, under BAT Option B , if EPA concludes at the time of promulgation that five years would be sufficient time to allow the subcategory as a whole to raise the capital necessary to implement the model BAT technology for the segment in a way to assure its economic achievability, then EPA would specify that date as the date by which the segment as a whole is subject to the "stage 2" BAT limitations.

EPA acknowledges that the uncertainties of the iron and steel market and the financial circumstances of individual firms may make it difficult to project the economic achievability of particular technologies in future years, even in the comparative near-term. EPA expects it would take into account a variety of factors, including the costs of the BAT model technology over a specified number of years, the expected industry price and revenue cycle, the economic impact on the segment of other EPA regulations that might affect them within the time frame, and resulting aggregate costs, closures, and firm failures.

In the effluent limitations guidelines and standards for the pulp, paper and paperboard industry, EPA adopted an approach similar to BAT Option B as part of its Voluntary Advanced Technology Incentives Program. See 40 CFR 430.24(b). Facilities choosing to participate in the Voluntary Advanced Technology Incentives Program could enroll at one of three levels, or tiers, each with its own set of limits and time frames for compliance and each based on a different model BAT technology (with technologies becoming more advanced as the time periods for compliance were extended). each tier, EPA promulgated voluntary advanced technology BAT limitations that consisted of three separate components. Together, the three components comprised BAT for any bleached papergrade kraft and soda mill that elected to participate in the voluntary

incentives program. See 40 CFR 430.24(b). The first component consisted of "stage 1" existing effluent quality limitations that were similar in principle to the "stage 1" limitations described above for BAT Option B. See 40 CFR 430.24(b)(1). The second component consisted of enforceable interim milestones developed on a best professional judgment basis by the permitting authority to reflect reasonable interim milestones toward achievement of the ultimate BAT limitations. See 40 CFR 430.24(b)(2). (The program also included numeric six-year milestone limitations that would apply to facilities that enrolled in Incentives Tiers with deadlines of 2009 and 2014. See 40 CFR 430.24(b)(3).) The third component consisted of numeric "stage 2" effluent limitations that reflected the limitations achievable by the model BAT technology for the particular tier. Taken together, these three components constitute reasonable further progress toward the national goal of eliminating the discharge of all pollutants and for this reason represented BAT.

EPA recognizes that some facilities in this segment are already achieving or are capable of achieving limitations approaching the ultimate "stage 2" limitations. In this situation, the "stage 1" or interim milestone BAT limitations for these mills would correspond to that level of achievement, as judged by the permitting authority based on monitoring data supplied by the facility. In this way, EPA would ensure that, for the segment as a whole, limitations would be derived from the "best" available technology economically achievable, even though that technology might vary on a mill-by-mill basis during the interim period before the "stage 2" limitations apply. This incremental approach is authorized by CWA section 301(b)(2)(A), which expressly requires BAT to result in reasonable further progress toward the national goal of eliminating pollutant discharges. EPA believes that the two-step approach set forth in BAT Option B would move facilities toward that national goal. Each facility in the segment would be required immediately to begin to implement a BAT package consisting of successively more stringent permit limits and conditions. Although environmental improvements are realized only incrementally, the facility is subject to BAT limits as soon as its permit is written based on the first increment of that BAT package. Thus, the facility is continuously subject to and must comply immediately with the BAT limits as they progressively unfold, including each interim BAT limitation or permit condition representing that progress.

EPA's promulgation of BAT as a package of progressively more stringent limitations and conditions is also consistent with the use of BAT as a "beacon to show what is possible." *Kennecott* v. *EPA*, 780 F.2d 445, 448 (4th Cir. 1985). By using BAT Option B, EPA thus would be able to promulgate forward-looking effluent limitations guidelines and standards for the segment as a whole. If EPA were to adopt BAT Option B, EPA would be promoting a form of technological progress that is consistent with Congressional intent that BAT should aspire to "increasingly higher levels of control." See, *e.g.*, Statement of Sen. Muskie (Oct. 4, 1972), reprinted in A Legislative History of the Water Pollution Control Act Amendments of 1972 ("1972 Leg. Hist."), at 170. It would also be consistent with the overall goals of the Act. See CWA section 101(a). Agencies have considerable discretion to interpret their statutes to promote Congressional objectives. "'[T]he breadth of agency discretion is, if anything, at zenith when the action * * * relates primarily to * * * the fashioning of policies, remedies and sanctions, including enforcement and voluntary compliance programs[,] in order to arrive at maximum effectuation of Congressional objectives.'" *U.S. Steelworkers of America* v. *Marshall*, 647 F.2d 1189, 1230–31 n.64 (D.C. Cir. 1980) (upholding OSHA rule staggering lead requirements over 10 years) (quoting *Niagara Mohawk Power Corp.* v. *FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967)), cert. denied, 453 U.S. 9113 (1981). In this case, the codification of progressively more stringent BAT limitations advances not only the general goal of the Clean Water Act, but also the explicit goal of the BAT program. See *Chevron, U.S.A., Inc.* v. *NRDC*, 467 U.S. 837, 843–44 (1984).

Moving toward the elimination of pollutant discharges in stages is also consistent with the overarching structure of the effluent limitations guidelines program. Congress originally envisioned that the sequence of attaining BPT limits in 1977 and BAT limits in 1983 would result in "levels of control which approach and achieve the elimination of the discharge of pollutants." Statement of Sen. Muskie (Oct. 4, 1972), reprinted in 1972 Legislative History, at 170. This two-step approach produced dramatic improvements in water quality, but did not achieve the elimination of pollutant discharges. Therefore, EPA periodically revisits and revises its effluent limitations guidelines with the intention each time of making further progress toward the national goal. This is the third effluent limitations guideline promulgated for the iron and steel industry. Achieving these incremental improvements through successive rulemakings carries a substantial cost, however. The effluent guideline rulemaking process can be highly complex, in large part because of the massive record compiled to inform the Agency's decisions and because of the substantial costs associated with achieving each additional increment of environmental improvement. If EPA were to adopt BAT Option B, EPA would hope to achieve the goals that Congress envisioned for the BAT program at considerably less cost: one rulemaking that looks both at the present and into the future.

Finally, like other agencies, EPA has inherent authority to phase in regulatory requirements in appropriate cases. EPA has employed this authority in other contexts. example, EPA recently phased in, over two years, TSCA rules pertaining to lead-based paint activities. See 40 CFR 746.239 and 61 FR 45788, 45803 (Aug. 29, 1996). Similarly, the Occupational Safety and Health Administration phased in, over 10 years, a series of progressively more stringent lead-related controls. See 29 CFR 1910.1025 (1979 ed.). Indeed, in upholding that rule, the U.S. Court of Appeals for the D.C. Circuit noted that "the extremely remote deadline at which the [sources] are to meet the final [permissible exposure limits] is perhaps the single most important factor supporting the feasibility of the standard." *United Steelworkers of America* v. *Marshall*, 647 F.2d at 1278.

EPA is aware that CWA sections 301(b)(2)(C) & (D) require BAT limits to be achieved "in no case later than three years after the date such limits are promulgated under section 304(b), and in no case later than March 31, 1989." (Section 301(b)(2)(F), which refers to BAT limitations for nonconventional pollutants, also contains the March 31, 1989 date, but uses as its starting point the date the limitations are "established.") This language does not speak to the precise question EPA confronts here: whether EPA can promulgate BAT limitations that are phased in over time, so that a direct discharger at all times is subject to and must comply immediately with the particular BAT limitations applicable to them at any given point in time. Section 301(b)(2) provides no clear direction. EPA therefore is charged with making a reasonable interpretation of the statute

to fill the gap. See *Chevron, U.S.A., Inc.* v. *NRDC,* 467 U.S. at 843–44. EPA believes that subjecting facilities to progressively more stringent BAT limitations over time could be the best way of achieving reasonable further progress toward eliminating all pollutant discharges, as intended by Congress. EPA could use BAT Option B to push facilities to achieve environmental reductions beyond those achievable if EPA proposes a BAT based on what is immediately attainable. BAT Option B would also make it possible for facilities to achieve these performance requirements at a pace that makes technical and economic sense. In fact, the Agency estimates the total annualized compliance costs for the alternative to be $13.3 million, which represents a savings of $7.9 million.

EPA specifically solicits comment on both of these options, including options for less expensive technology. Even though the Agency believes that Option A is economically achievable, there may be non-trivial impacts for a few firms. The Agency could not identify less-expensive treatment technology that would meet the objectives of the CWA. Therefore EPA also solicits comment on whether there is any rational basis to distinguish among mills in this segment, so as to apply BAT Option B only to a specific subsegment of mills for which the model technology is not economically achievable at the time of promulgation.

ii. *PSES/PSNS.* EPA estimates that PSES–1, whose technical basis consists of a scale pit with oil skimming, a roughing clarifier, sludge dewatering, filtration, and high rate recycle, with mixed-media filtration of blowdown, would result in a flow reduction of 74% over current conditions, and a 53% reduction in discharge of toxic and non-conventional pollutants. However, EPA does not propose to promulgate PSES for the carbon and allow steel segment of the proposed Integrated and Stand Alone Hot ming subcategory. EPA believes that nationally applicable PSES regulations are unnecessary at this time, because there are only seven facilities in this segment and because PSES–1 would result in an average removal of only 21 toxic pound-equivalents per facility per year for these facilities. These reductions are much lower than other categorical standards promulgated by EPA. example, Organic Chemical, Plastics, and Synthetic Fibers (OCPSF), Electroplating, Battery Manufacturing, and Porcelain Enameling toxic pound equivalents removed per facility per year range from 6,747 to 14,960. In addition, EPA recently decided not to promulgate pretreatment standards for two industrial categories, Industrial Laundries, see 64 FR 45072 (August 18, 1999) and Landfills, see 65 FR 3008 (January 19, 2000), based on low removals of toxic pound equivalents by facilities in those categories. In the case of industrial laundries, EPA decided not to promulgate pretreatment standards based on 32 toxic pound equivalents per facility per year, and in the landfills effluent guidelines, EPA decided not to promulgate pretreatment standards for non-hazardous landfills based on the removal of only 14 toxic pound equivalents per facility per year.

The Agency believes that pretreatment local limits implemented on a case-by-case basis can more appropriately address any individual toxic parameters present at these facilities.

iii. *NSPS.* EPA proposes BAT Option A as the basis for NSPS for this segment because EPA believes it represents the best demonstrated technology for this segment.

iv. *PSNS.* EPA is proposing not to revise PSNS for this segment because EPA does not foresee the construction of any new indirect discharging facilities that would be subject to this segment. EPA also does not believe that it is practicable for a direct discharging facility covered by this segment to become an indirect discharging facility because their flows would be too large for a POTW to handle.

2. *Stainless*

a. *Regulated Pollutants.* i. *BAT* EPA is proposing regulating the following pollutants: chromium and nickel.

ii. *PSES/PSNS.* See discussion under "Technology Selected—PSES/PSNS" below.

iii. *NSPS.* EPA is proposing to regulate the same pollutants as for BAT, with the addition of TSS and oil & grease.

b. *Technology Selected.* i. *BAT.* The treatment technologies that serve as the basis for the development of the proposed BAT limits for the stainless segment of the integrated and stand alone hot forming subcategory are: Scale pit with oil skimming, roughing clarifier, with high rate recycle and mixed-media filtration of blowdown. This option is referred to as BAT–1 in Section V.C. EPA estimates that no facilities would close as a result of BAT–1. EPA has determined that this option is economically achievable. EPA did not pursue additional, more stringent options because all significant POCs in the effluent after application of BAT–1 system are projected to exist at levels too low to be further treated by any add-on technology. Therefore, EPA proposes BAT–1 as the technology basis for BAT for the stainless steels segment of the proposed Integrated and Stand Alone Hot ming subcategory.

ii. *PSES/PSNS.* EPA estimates that PSES–1 for the stainless segment of the integrated and stand alone hot forming subcategory would result in a reduction of 90% of the flow from current levels, and a 66% removal of toxic and non-conventional pollutants. However, EPA does not propose to promulgate PSES for the stainless steel segment of the proposed Integrated and Stand Alone Hot ming subcategory. EPA believes that nationally applicable PSES regulations are unnecessary at this time, because there are only three facilities in this segment and because PSES–1 would result in an average removal of only 4 toxic pound-equivalents per facility per year for these facilities. These reductions are much lower than other categorical standards promulgated by EPA. example, Organic Chemical, Plastics, and Synthetic Fibers (OCPSF), Electroplating, Battery Manufacturing, and Porcelain Enameling toxic pound equivalents removed per facility per year range from 6,747 to 14,960. And, EPA recently decided not to promulgate pretreatment standards for two industrial categories, Industrial Laundries, see 64 FR 45072 (August 18, 1999) and Landfills, see 65 FR 3008 (January 19, 2000), based on low removals of toxic pound equivalents by facilities in those categories. In the industrial laundries rule, EPA decided not to promulgate pretreatment standards based on 32 toxic pound equivalents per facility per year, and in the landfills effluent guidelines, EPA decided not to promulgate pretreatment standards for non-hazardous landfills based on the removal of only 14 toxic pound equivalents per facility per year.

The Agency believes that pretreatment local limits implemented on a case-by-case basis can more appropriately address any individual toxic parameters present at these facilities.

iii. *NSPS.* EPA's proposed technology is the same as the proposed BAT technology for this segment because no other treatment technologies are demonstrated to control the pollutants EPA proposes to regulate.

F. Non-integrated Steelmaking and Hot ming

After considering all of the technology options described in the Section V.C in light of the factors specified in section 304(b)(2)(B) and 306 of the Clean Water Act, as appropriate, EPA proposes to select the technology options identified below as BAT, PSES, NSPS, and PSNS for the carbon and alloy segment and

the stainless steel segment of the proposed Non-integrated and Stand Alone Hot ming Subcategory.

1. *Carbon and Alloy*

a. *Regulated Pollutants.* i. *BAT.* EPA is proposing regulating the following pollutants: lead and zinc.

ii. *PSES.* See discussion under "Technology Selected—PSES" below.

iii. *NSPS/PSNS.* EPA proposes no discharge of process wastewater pollutants to waters of the US for NSPS and PSNS.

b. *Technology Selected.*

i. *BAT.* The treatment technologies that serve as the basis for the development of the proposed BAT limits for the carbon and alloy segment of the proposed Non-integrated and Stand Alone Hot ming Subcategory are: solids removal, cooling tower, high rate recycle, mixed-media filtration of recycled flow or of low volume blowdown flow, and sludge dewatering. This is identified as BAT–1 in Section V.C. EPA estimates that the BAT–1 technology would result in a reduction of 90% of flow and a 72% reduction in the discharge of toxic and non-conventional pollutants. EPA estimates BAT–1 to remove 39,100 toxic pound-equivalents beyond current conditions, at an annualized compliance cost of $3.1 million (1997$). EPA estimates that no facilities would close as a result of BAT–1. EPA has determined that this option is economically achievable. EPA did not pursue additional, more stringent options because all significant POCs in the effluent after application of BAT–1 system are projected to exist at levels too low to be further treated by any add-on technology. Therefore, EPA proposes BAT–1 as the technology basis for BAT for the carbon and allow steel segment of the proposed Non-Integrated and Stand Alone Hot ming subcategory.

ii. *PSES.* EPA estimates that the PSES–1 technology would result in a reduction of flow of 7%, and the reduction in the discharge of non-conventional pollutants by 4.3%. However, EPA does not propose to revise PSES for the carbon and alloy steel segment of the proposed Non-Integrated and Stand Alone Hot ming subcategory. EPA believes that nationally applicable PSES regulations are unnecessary at this time, because there are only 15 facilities in this segment and because PSES–1 would result in an average removal of only 3 toxic pound-equivalents per facility per year for these facilities. These reductions are much lower than other categorical standards promulgated by EPA. example, Organic Chemical, Plastics, and Synthetic Fibers (OCPSF), Electroplating, Battery Manufacturing, and Porcelain Enameling toxic pound equivalents removed per facility per year range from 6,747 to 14,960. And, EPA recently decided not to promulgate pretreatment standards for two industrial categories, Industrial Laundries, see 64 FR 45072 (August 18, 1999) and Landfills, see 65 FR 3008 (January 19, 2000), based on low removals of toxic pound equivalents by facilities in those categories. In the industrial laundries rule, EPA decided not to promulgate pretreatment standards based on 32 toxic pound equivalents per facility per year, and in the landfills effluent guidelines, EPA decided not to promulgate pretreatment standards for non-hazardous landfills based on the removal of only 14 toxic pound equivalents per facility per year.

While EPA does not propose to revise PSES for this segment, EPA intends to re-codify the current PSES to fit the new proposed subcategorization format.

iii. *NSPS/PSNS.* EPA proposes no discharge of process wastewater pollutants to waters of the US for NSPS and PSNS. The model NSPS process water and water pollution control technologies include treatment and high-rate recycle systems, management of process area storm water, and disposal of low-volume blowdown streams by evaporation through controlled application on electric furnace slag, direct cooling of electrodes in electric furnaces, and other evaporative uses. Operators of 24 existing non-integrated steel facilities have reported zero discharge of process wastewater. These facilities are located in the following states: Alabama, Arizona, Georgia, Illinois, Indiana, Louisiana, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Utah, and Washington. In the Non-Integrated Steelmaking and Hot ming subcategory, the 24 facilities produce the following products: Bars, beams, billets, flats, plate, rail, rebar, rod, sheet, slabs, small structurals, strip, and specialty sections. Consequently, the Agency has determined that zero discharge is an appropriate NSPS for non-integrated steelmaking and hot forming operations located in any area of the United States and producing any product. EPA judged that there is no barrier to entry for new sources to achieve this option.

2. Stainless

a. *Regulated Pollutants.* i. *BAT.* EPA is proposing regulating the following pollutants: chromium and nickel.

ii. *PSES.* EPA is proposing regulating the following pollutants: chromium and nickel. Using the methodology described in Section IX.A.2, EPA has determined that both pollutants pass through.

iii. *NSPS/PSNS.* EPA proposes no discharge of process wastewater pollutants to waters of the US for NSPS/PSNS.

b. *Technology Selected.* i. *BAT.*

The treatment technologies that serve as the basis for the development of the proposed BAT limits for the Stainless segment are: solids removal, cooling tower, high rate recycle, mixed-media filtration of recycled flow or of low volume blowdown flow, and sludge dewatering. This is identified as BAT–1 in Section V.C. Under BAT–1, water usage would be reduced by 50% over current levels, and total loadings of non-conventionals would be reduced by 29%. EPA estimates BAT–1 to remove 1,560 toxic pound-equivalents beyond current conditions, at an annualized compliance cost of $0.1 million (1997$). EPA estimates that no facilities would close as a result of BAT–1. EPA has determined that this option is economically achievable. EPA did not pursue additional, more stringent options because all significant POCs in the effluent after application of BAT–1 system are projected to exist at levels too low to be further treated by any add-on technology. Therefore, EPA proposes BAT–1 as the technology basis for BAT for the stainless steel segment of the Non-Integrated Steelmaking and Hot ming subcategory.

ii. *PSES.* The treatment technologies that serve as the basis for the development of the proposed PSES limits for the Stainless segment are the same as for BAT–1. This option provides controls for each pollutant that EPA has determined passes through for this segment. EPA estimates that the PSES–1 technology would result in a reduction of flow of 85%, and the reduction in the discharge of non-conventional pollutants by 20%. EPA estimates that no facilities would close as a result of BAT–1. EPA has determined that this option is economically achievable. As was the case for BAT, EPA did not pursue additional, more stringent options for PSES because all significant POCs in the effluent after application of BAT–1 system are projected to exist at levels too low to be further treated by this or any other add-on technology. Therefore, EPA proposes BAT–1 as the technology basis for PSES for this segment.

iii. *NSPS/PSNS.* EPA proposes no discharge of process wastewater pollutants to waters of the US for NSPS and PSNS. See discussion under NSPS/PSNS for the Carbon and Alloy segment of this subcategory, above.

G. Finishing

After considering all of the technology options described in the Section V.C in light of the factors specified in section 304(b)(2)(B) and 306 of the Clean Water Act, as appropriate, EPA proposes to select the technology options identified below as BAT, PSES, NSPS, and PSNS for the carbon and allow segment and the stainless steel segment of the proposed Finishing Subcategory.

1. Carbon and Alloy

a. *Regulated Pollutants.* i. *BAT.* EPA is proposing regulating the following pollutants: hexavalent chromium, chromium, lead, and zinc.

ii. *PSES.* See discussion under "Technology selected—PSES" below.

iii. *NSPS.* EPA is proposing regulating the same pollutants as for BAT, with the addition of TSS and oil & grease.

iv. *PSNS.* EPA is proposing regulating the same pollutants as for BAT. Using the methodology described in Section IX.A.2, EPA has determined that hexavalent chromium, chromium, lead, and zinc pass through.

b. *Technology Selected.* i. *BAT.* The treatment technologies that serve as the basis for the development of the proposed BAT limits for the Carbon and Alloy segment for the proposed steel finishing subcategory are: recycle of fume scrubber water, diversion tank, oil removal, hexavalent chrome reduction (where applicable), equalization, metals precipitation, sedimentation, sludge dewatering, and counter-current rinses. This is identified as BAT–1 in Section V.C. EPA estimates that selection of the BAT–1 option as the technology basis would result in the reduction of flow by this segment of the non-integrated steelmaking and hot forming subcategory by 65%, and the reduction in the discharge of non-conventional pollutants by 25%. EPA estimates BAT–1 to remove 22,410 toxic pound-equivalents beyond current conditions, at an annualized compliance cost of $4.0 million (1997$). EPA estimates that no facilities would close as a result of BAT–1. EPA has determined that this option is economically achievable. EPA did not pursue additional, more stringent options because all significant POCs in the effluent after application of BAT–1 system are projected to exist at levels too low to be further treated by any other add-on technology. Therefore, EPA proposes BAT–1 as the technology basis for BAT for the carbon and alloy segment of the proposed Steel Finishing subcategory.

ii. *PSES.* The treatment technologies that serve as the basis for PSES–1 are the same as the BAT–1 technologies. EPA estimates that, under PSES–1, flow from this segment of the Finishing subcategory would decrease by 30%, and the amount of toxic and non-conventional pollutants discharged would decrease by 10%. However, EPA does not propose to revise PSES for the carbon and allow steel segment of the proposed Steel Finishing subcategory. EPA believes that nationally applicable PSES regulations are unnecessary at this time, because PSES–1 would result in an average removal of only 12 toxic pound-equivalents per facility per year for these facilities. These reductions are much lower than other categorical standards promulgated by EPA. example, Organic Chemical, Plastics, and Synthetic Fibers (OCPSF), Electroplating, Battery Manufacturing, and Porcelain Enameling toxic pound equivalents removed per facility per year range from 6,747 to 14,960. And, EPA recently decided not to promulgate pretreatment standards for two industrial categories, Industrial Laundries, see 64 FR 45072 (August 18, 1999) and Landfills, see 65 FR 3008 (January 19, 2000), based on low removals of toxic pound equivalents by facilities in those categories. In the industrial laundries rule, EPA decided not to promulgate pretreatment standards based on 32 toxic pound equivalents per facility per year, and in the landfills effluent guidelines, EPA decided not to promulgate pretreatment standards for non-hazardous landfills based on the removal of only 14 toxic pound equivalents per facility per year.

While EPA does not propose to revise PSES for this segment, EPA intends to re-codify the current PSES to fit the new proposed subcategorization format.

iii. *NSPS/PSNS.* EPA proposes NSPS and PSNS for this subcategory to be the same as the proposed BAT technology because no other treatment technologies are demonstrated to control the pollutants EPA proposes to regulate.

2. Stainless

a. *Regulated Pollutants.* i. *BAT.* EPA is proposing regulating the following pollutants: hexavalent chromium, chromium, nickel, ammonia-N, and fluoride.

EPA is aware of a potential problem associated with nitrate discharge from one stainless steel finishing operation with combination (hydrofluoric and nitric) acid pickling. It may be that similar problems are associated with discharges coming from similar operations in other parts of the country. Nitrates, when consumed in drinking water, can be associated with health problems in humans, particularly infants.

Nitrates were identified as a pollutant of concern for stainless steel acid pickling operations where nitric acids and combinations of nitric and hydrofluoric acids are used for surface treatments for various grades of stainless steels. Nitrates originate from the nitric acids used in the process and are released from three sources: waste or spent pickling acids, pickle rinse waters and acid pickling fume scrubbers. Some stainless steel finishing operations dispose of their nitrate bearing wastewater via off-site hauling. Many other stainless steel finishing facilities treat spent nitric acid and nitric/hydrofluoric acid pickle liquors on site with the pickling rinse waters and fume scrubber waters from other stainless steel finishing operations. Nitrates are soluble in water and thus are not removed to any appreciable degree in the metals precipitation systems used to treat chromium and nickel in stainless steel finishing wastewaters.

EPA collected information from mills with stainless steel finishing operations with onsite chemical precipitation treatment of spent nitric and nitric/hydrofluoric acids in combination with pickle rinse waters and acid pickling fume scrubber blow-down. The treated effluent nitrate concentrations from the mills without acid purification units ranged from about 500 to more than 1,000 mg/l.

Acid purification systems are used on several stainless steel acid pickling lines for recovery and reuse of nitric and nitric/hydrofluoric acids. This technology comprises removal of dissolved metals (iron, chromium, nickel) from a side stream of the strong acid pickling solution and return of the purified acid to the acid pickling bath. This essentially extends the life of the pickling acids, thereby reducing the consumption of virgin nitric acid. A reject stream containing dilute acid and the dissolved metals is periodically sent to wastewater treatment.

The model BAT technology for stainless steel finishing operations includes acid purification units for recovery and reuse of spent nitric and nitric/hydrofluoric acid pickling solutions. EPA believes facilities using acid purification technology can achieve long-term average concentrations of nitrates in the treated stainless steel acid pickling wastewater effluent in the range of 200 mg/l to 300 mg/l.

EPA is considering developing a limit for nitrate (in the form of nitrate-nitrite-N) for stainless steel finishing operations with combination acid pickling. EPA solicits comment and information on this issue, particularly (a) monitoring data from steel finishing

operations that discharge nitrates, or POTWs that receive wastewater from these operations, and (b) performance data and cost estimates from vendors of pollution control equipment that is capable of achieving substantial reduction of nitrates from steel pickling wastewaters.

ii. *PSES.* See discussion under "Technology Selected—PSES" below.

iii. *NSPS/PSNS.* EPA is proposing regulating the same pollutants as for BAT, with the addition of TSS and oil & grease.

iv. *PSNS.* EPA is proposing regulating the same pollutants as for BAT. Using the methodology described in Section IX.A.2, EPA has determined that hexavalent chromium, chromium, nickel, ammonia-N, and fluoride pass through.

b. *Technology Selected.* i. *BAT.* The treatment technologies that serve as the basis for the development of the proposed BAT for the Stainless segment of the proposed steel finishing subcategory are Recycle of fume scrubber water, diversion tank, oil removal, hexavalent chrome reduction (where applicable), equalization, metals precipitation, sedimentation, sludge dewatering, counter-current rinses, and acid purification. This is identified as BAT–1 in Section V.C. EPA estimates that, under BAT–1, flow from this segment of the Finishing subcategory would decrease by 47%, and the amount of toxic and non-conventional pollutants discharged would decrease by 45%. EPA estimates BAT–1 to remove 69,700 toxic pound-equivalents beyond current conditions, at an annualized compliance cost of $0.2 million (1997$). EPA estimates that no facilities would close as a result of BAT–1. EPA has determined that this option is economically achievable. EPA did not pursue additional, more stringent options because all significant POCs in the effluent after application of BAT–1 system are projected to exist at levels too low to be further treated by any other add-on technology. Therefore, EPA proposes BAT–1 as the technology basis for BAT for the stainless steel segment of the proposed Steel Finishing subcategory.

ii. *PSES.* The treatment technologies that serve as the basis for PSES–1 are the same as the BAT–1 technologies. EPA estimates that, under PSES–1, flow from the stainless segment of the Steel Finishing subcategory would decrease by 23%, and the amount of toxic and non-conventional pollutants discharged would decrease by 10%. However, EPA is not proposing to revise PSES for facilities in this segment.

EPA discovered that the majority (548 of 653) of the toxic pound-equivalents projected to be removed through promulgation of PSES standards were attributable to one parameter (fluoride) from one facility. EPA believes that, in a situation like this, it is more appropriate for the POTW control authority for that facility to control the pollutant release through its pretreatment control mechanism, rather than to implement a national pretreatment standard. When these toxic pound-equivalents are removed from the analysis, the number of toxic pound-equivalents per facility drops to 7. EPA recently decided not to promulgate pretreatment standards for two industrial categories, Industrial Laundries, see 64 FR 45072 (August 18, 1999) and Landfills, see 65 FR 3008 (January 19, 2000), with projected removals of toxic pound equivalents by facilities in those categories comparable to this. In the industrial laundries rule, EPA decided not to promulgate pretreatment standards based on 32 toxic pound equivalents per facility per year; and in the landfills effluent guidelines, EPA decided not to promulgate pretreatment standards for non-hazardous landfills based on the removal of only 14 toxic pound equivalents per facility per year.

While EPA does not propose to revise PSES for this segment, EPA intends to re-codify the current PSES to fit the new proposed subcategorization format. The PSES limits currently in 40 CFR part 420 for each manufacturing process except electroplating would continue to apply under this proposal. Limits for the electroplating manufacturing process are currently included in 40 CFR part 433. The PSES limits in 40 CFR part 433 are concentration-based, as opposed to those in 40 CFR part 420, which are mass-based. To ensure a consistent basis for facilities operating other operations in addition to electroplating, EPA is proposing to convert the existing 40 CFR part 433 PSES concentration-based limits to mass-based limits by multiplying by the proposed BAT production-normalized flow rate and the appropriate conversion factor. Nine pollutants are regulated under PSES at 40 CFR part 433, some of which do not apply to electroplating operations as performed in the Iron and Steel industry. EPA proposes to specify PSES limits for four of the pollutants: Chromium, lead, nickel, and zinc. These four metals were identified as POCs for electroplating manufacturing operations in section 7 of the technical development document. EPA does not believe this action will result in incremental cost increases to the industry. EPA seeks industry comment on this matter.

iii. *NSPS/PSNS.* EPA proposes NSPS and PSNS for this subcategory to be the same as the proposed BAT technology because no other treatment technologies are demonstrated to control the pollutants EPA proposes to regulate.

H. Other

After considering all of the technology options described in the Section V.C in light of the factors specified in section 304(b)(1)(B) and 306 of the Clean Water Act, as appropriate, EPA proposes to select the technology options identified below as BPT, PSES, NSPS, and PSNS for the following proposed segments in this final subcategory: Direct-Reduced Ironmaking, ging, and Briquetting.

1. Direct-reduced Ironmaking (DRI)

a. *Regulated Pollutants.* The Agency proposes to regulate TSS for this segment.

b. *Technology Selected.* i. *BPT/BCT/NSPS.* EPA is proposing BPT and BCT for the Direct-reduced Ironmaking (DRI) segment because the Agency is setting limits for the first time for the conventional pollutants in this subcategory. The treatment technologies that serve as the basis for the development of the proposed BPT/BCT/NSPS limits for the DRI segment are: solids removal, clarifier, and high rate recycle, with filtration for blowdown wastewater. This is identified as BPT–1 in Section V.C. EPA estimates that no facilities would close as a result of BPT–1.EPA proposes this option because it is the best practicable control technology currently available. It is also the best demonstrated technology for controlling the discharge of conventional pollutants from these operations. EPA is not proposing BAT limitations for this segment because it has identified no toxic or non-conventional pollutants of concern for the segment.

ii. *PSES/PSNS.* The Agency reserves PSES/PSNS for the DRI segment it found no pollutants that pass through.

2. ging

a. *Regulated Pollutants and Limits.* i. *Direct Dischargers (BPT/BCT/NSPS).* The Agency proposes to regulate TSS and oil & grease for this segment.

ii. *Indirect Dischargers (PSES/PSNS).* The Agency reserves PSES/PSNS for the forging segment because it found no pollutants that pass through.

b. *Technology Selected.* i. *BPT/BCT/NSPS.* forging operations, EPA is proposing BPT/BCT because the Agency is setting limits for the first time for the conventional pollutants in this

subcategory. The treatment technology that serves as the basis for the development of the proposed BPT and BCT limitations and NSPS for the ging segment is oil/water separation. This is identified as BPT–1 in Section V.C. EPA estimates that there will be a reduction of O&G of 72% from direct discharging forging operations as a result of implementation of this BPT/BCT option.

EPA estimates that no facilities would close as a result of BPT–1. EPA proposes this option because it is the best practicable control technology currently available. It is also the best demonstrated technology for controlling the discharge of conventional pollutants from these operations.

EPA is not proposing BAT limitations for this segment because it has identified no toxic or non-conventional pollutants of concern for the segment. EPA is not proposing pretreatment standards for this segment because it found no pollutants that pass through.

3. Briquetting

a. *Technology Selected.* The proposed BPT/BCT/NSPS/PSES/PSNS limits for the Briquetting segment are: no discharge of process wastewater pollutants to waters of the U.S.

X. Regulatory Implementation

A. Implementation of Part 420 Through the NPDES Permit Program and the National Pretreatment Program

Under sections 301, 304, 306 and 307 of the CWA, EPA promulgates national effluent limitations guidelines and standards of performance for major industrial categories for three classes of pollutants: (1) Conventional pollutants (*i.e.,* total suspended solids, oil and grease, biochemical oxygen demand, fecal coliform, and pH); (2) toxic pollutants (*e.g.,* toxic metals such as chromium, lead, nickel, and zinc; toxic organic pollutants such as benzene, benzo-a-pyrene, and naphthalene); and (3) non-conventional pollutants (*e.g.,* ammonia-N, fluoride, iron, total phenols, and 2,3,7,8-tetrachlorodibenzofuran).

As discussed in Section II, EPA must promulgate six types of effluent limitations guidelines and standards for each major industrial category, as appropriate:

Abbreviation	Effluent limitation guideline or standard
BPT	Best Practicable Control Technology Currently Available.
BAT	Best Available Technology Economically Achievable.
BCT	Best Control Technology for Conventional Pollutants.
NSPS	New Source Performance Standards.
PSES	Pretreatment Standards for Existing Sources.
PSNS	Pretreatment Standards for New Sources.

The pretreatment standards apply to industrial facilities with wastewater discharges to POTWs, which generally are municipal wastewater treatment plants. The effluent limitations guidelines and new source performance standards apply to industrial facilities with direct discharges to navigable waters.

1. NPDES Permit Program

Section 402 of the CWA establishes the National Pollutant Discharge Elimination System (NPDES) permit program. The NPDES permit program is designed to limit the discharge of pollutants into navigable waters of the United States through a combination of various requirements including technology-based and water quality-based effluent limitations. This proposed regulation contains the categorical technology-based effluent limitations guidelines and standards applicable to the iron and steel industry to be used by permit writers to derive NPDES permit technology-based effluent limitations. Water quality-based effluent limitations (WQBELs) are based on receiving water characteristics and ambient water quality standards, including designated water uses. They are derived independently from the technology-based effluent limitations set out in this proposed regulation. The CWA requires that NPDES permits must contain for a given discharge, the more stringent of the applicable technology-based and water quality-based effluent limitations.

Section 402(a)(1) of the CWA provides that in the absence of promulgated effluent limitations guidelines or standards, the Administrator, or her designee, may establish effluent limitations for specific dischargers on a case-by-case basis. Federal NPDES permit regulations provide that these limits may be established using "best professional judgment" (BPJ) taking into account any proposed effluent limitations guidelines and standards and other relevant scientific, technical and economic information. Where EPA has promulgated technology-based effluent limitations guidelines and standards for particular pollutants, any more stringent effluent limitations must be either WQBELs or effluent limitations derived under other regulations established by the permit authority.

Section 301 of the CWA, as amended by the Water Quality Act of 1987, requires that BAT effluent limitations for toxic pollutants are to have been achieved as expeditiously as possible, but not later than three years from date of promulgation of such limitations and in no case later than March 31, 1989. See 301(b)(2). Because the proposed revisions to 40 CFR part 420 will be promulgated after March 31, 1989, NPDES permit effluent limitations based on the revised effluent limitations guidelines must be included in the next NPDES permit issued after promulgation of the regulation and the permit must require immediate compliance.

2. New Source Performance Standards

purposes of applying the new source performance standards (NSPS) being proposed today, a source is a new source if it commences construction after the effective date of the forthcoming final rule. (EPA expects to take final action on this proposal in April 2002, which is more than 120 days after the date of proposal.) See 40 CFR 122.2. Each source that meets this definition would be required to achieve any applicable newly promulgated NSPS upon commencing discharge.

However, the currently codified NSPS continue to have force and effect for a limited universe of new sources; for this reason, in today's proposed rule, EPA is retaining the NSPS promulgated in 1982 for part 420. Specifically, following promulgation of any revised NSPS, the 1982 NSPS would continue to apply for a limited period of time to new sources that commenced discharge within the time period beginning ten years before the effective date of a final rule revising part 420. Thus, if EPA promulgates revised NSPS for Part 420 in April 2002, and those regulations take effect in June 2002, any direct discharging new source that commenced discharge after June 1992 but before June 2002 would be subject to the currently codified NSPS for ten years from the date it commenced discharge or during the period of depreciation or amortization of such facility, whichever comes first. See CWA section 306(d). After that ten year period expires, any new or revised BAT limitations would apply with respect to toxics and nonconventional pollutants. Limitations on conventional pollutants would be based on the1982 NSPS for conventional pollutants unless EPA promulgates revisions to BPT/BCT for conventional pollutants that are more stringent than the 1982 NSPS.

Rather than reproduce the 1982 NSPS in the proposed rule (which is substantially reorganized from the 1982 structure), EPA proposes to refer permitting authorities to the NSPS codified in the 2000 edition of the Code of Federal Regulations for use during the applicable ten-year period. (The 2000 edition of the Code of Federal Regulations presents the 1982 NSPS tables.) This approach would allow EPA to avoid reproducing in the new regulations numerous tables of NSPS that would soon become outdated.

National Pretreatment Standards

40 CFR Part 403 sets out national pretreatment standards which have three principal objectives: (1) To prevent the introduction of pollutants into publicly owned treatment works (POTWs) that will interfere with POTW operations, including use or disposal of municipal sludge; (2) to prevent the introduction of pollutants into POTWs which will pass through the treatment works or will otherwise be incompatible with the treatment works; and (3) to improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

The national pretreatment standards comprise a series of prohibited discharges designed to prevent interference with POTW operations and federal categorical pretreatment standards designed to prevent pass through of pollutants introduced to POTWs by industrial sources. Local control authorities are required to implement the national pretreatment program including application of the federal categorical pretreatment standards to their industrial users that are subject to such categorical pretreatment standards, as well as any pretreatment standards derived locally (*i.e.,* local limits) that are more restrictive than the federal categorical standards. This proposed regulation sets out revisions to the federal categorical pretreatment standards (PSES and PSNS) applicable to iron and steel facilities regulated by 40 CFR part 420.

The federal categorical pretreatment standards for existing sources must be achieved not later than three years after promulgation of the standards. During that three year period, existing indirect discharges are subject to the 1982 PSES. The 1982 PSES would no longer apply after the expiration of that three-year period. Rather than reproduce the 1982 PSES in the proposed rule (which is substantially reorganized from the 1982 structure), EPA proposes to refer pretreatment control authorities to the PSES codified in the 2000 edition of the Code of Federal Regulations for use during that three-year period. (The 2000 edition of the Code of Federal Regulations presents the 1982 PSES tables.) This approach would allow EPA to avoid reproducing in the new regulations numerous tables of pretreatment standards that would become outdated within three years.

the purposes of this rule, EPA proposes to treat new indirect dischargers in the same way that it treats new direct dischargers, in several material respects.

First, as discussed elsewhere in this preamble, EPA proposes PSNS technologies to be identical to NSPS technologies except where different technologies are justified by EPA's pass through analysis.

Second, for indirect dischargers that are subject to the current PSNS, EPA proposes to maintain the current PSNS for ten years beginning on the date the new indirect discharger commenced discharge or during the period of depreciation or amortization of the facility, whichever comes first. Thereafter, the indirect discharger would be subject to any newly promulgated PSES. EPA sees no principled basis to distinguish between new direct and indirect dischargers when deciding whether to apply more stringent standards within the first ten years of operation. Like new direct dischargers, new indirect dischargers were designed and constructed to meet existing performance standards for new sources. Concluding that it would be unfair to require a new source to meet a new set of limits within the first ten years of operation, Congress passed CWA section 306(d). EPA believes the same concerns apply to new indirect dischargers; therefore, in the interests of equity, EPA proposes to apply the ten-year shield to new indirect dischargers as well.

Third, EPA proposes to characterize a source as a new source subject to the new PSNS if it commences construction after the effective date of the forthcoming final rule. Each source that meets this definition would be required to achieve any applicable newly promulgated PSNS upon commencing discharge. EPA believes this definition is appropriate in the context of part 420 because PSNS already exists to regulate any indirect discharges that might commence construction prior to promulgation of revisions to part 420. Therefore, this is not a situation where new discharges might go unregulated during the period between proposed and final action. This definition is also consistent with the most recent interpretation of CWA section 306, upon which EPA relies by analogy. In 1983, the U.S. Court of Appeal for the Third Circuit struck down the definition of new source in EPA's pretreatment regulations based on its interpretation of section 306, which applies to direct discharging new sources. See *National Assoc. of Metal Finishers, et al.* v. *EPA,* 719 F.2d 624 (3d Cir. 1983). In 1987, the U.S. Court of Appeals for the District of Columbia disagreed with the Third Circuit's interpretation of section 306 and upheld a definition of new source that was tied to the date of promulgation rather than the date of proposal. See *NRDC* v. *EPA,* 822 F.2d 104 (D.C. Cir. 1987). The court reasoned that a period of uncertainty beyond 120 days (from proposal to promulgation) was unreasonable, and that Congress could not have intended potential new sources "to languish in doubt as to when non-final regulations would eventually enjoy the force of law." This reasoning is relevant to this rulemaking, where EPA is scheduled to take final action on today's proposal in 18 months. Finally, EPA's approach in this proposed rule is also distinguishable from the facts contemplated by the Third Circuit, which did not consider the retrofitting costs a new source might incur when planning and constructing its facility in accordance with the current PSNS, only to have to make potentially costly adjustments soon thereafter to comply with newly promulgated PSNS.

Rather than reproduce the 1982 PSNS in the proposed rule (which is substantially reorganized from the 1982 structure), EPA proposes to refer pretreatment control authorities to the PSNS codified in the 2000 edition of the Code of Federal Regulations for use during the applicable ten-year period. (The 2000 edition of the Code of Federal Regulations presents the 1982 PSNS tables.) This approach would allow EPA to avoid reproducing in the new regulations numerous tables of PSNS that have already been codified.

B. Upset and Bypass Provisions

A "bypass" is an intentional diversion of waste streams from any portion of a treatment facility. An "upset" is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. EPA's regulations concerning bypasses and upsets for direct dischargers are set forth at 40 CFR 122.41(m) and (n) and for indirect dischargers at 40 CFR 403.16 and 403.17.

C. Variances and Removal Credits

1. Variances

The NPDES permit regulations provide for the following types of modifications of permit effluent limitations derived from the effluent limitations guidelines:

a. Section 301(c) economic variance from BAT for non-conventional pollutants.

b. Section 301(g) water quality-related variance from BAT for non-conventional pollutants.

c. Section 316(a) thermal variance from BPT, BCT and BAT.

d. Fundamentally different factors variance (40 CFR part 125, subpart D).

Although final regulations that set out criteria for applying for and evaluating applications for section 301(c) and 301(g) variances have not been promulgated, EPA has published guidance materials for permit authorities regarding such variances. Variances under section 316(a) for thermal discharges are not at issue in the current 40 CFR part 420, or with these proposed modifications, because effluent limitations guidelines for thermal discharges have not been promulgated previously, nor is EPA proposing them at this time. See the published guidance materials and 40 CFR part 125 for further information regarding the above-listed variances. The pretreatment regulations incorporate a similar requirement at 40 CFR 403.13(h)(9).

2. Removal Credits

Section 307(b)(1) of the CWA establishes a discretionary program for POTWs to grant "removal credits" to their indirect dischargers. Removal credits are a regulatory mechanism by which industrial users may discharge a pollutant in quantities that exceed what would otherwise be allowed under an applicable categorical pretreatment standard because it has been determined that the POTW to which the industrial user discharges consistently treats the pollutant. EPA has promulgated removal credit regulations as part of its pretreatment regulations. See 40 CFR 403.7. These regulations provide that a POTW may give removal credits if prescribed requirements are met. The POTW must apply to and receive authorization from the Approval Authority. To obtain authorization, the POTW must demonstrate consistent removal of the pollutant for which approval authority is sought. Further, the POTW must have an approved pretreatment program. Finally, the POTW must demonstrate that granting removal credits will not cause the POTW to violate applicable Federal, State and local sewage sludge requirements. 40 CFR 403.7(a)(3).

The United States Court of Appeals for the Third Circuit interpreted the Clean Water Act as requiring EPA to promulgate the comprehensive sewage sludge regulations required by CWA § 405(d)(2)(A)(ii) before any removal credits could be authorized. See *NRDC* v. *EPA*, 790 F.2d 289, 292 (3rd Cir., 1986); cert. denied. 479 U.S. 1084 (1987). Congress made this explicit in the Water Quality Act of 1987, which provided that EPA could not authorize any removal credits until it issued the sewage sludge use and disposal regulations. On February 19, 1993, EPA promulgated Standards for the Use or Disposal of Sewage Sludge, which are codified at 40 CFR part 503 (58 FR 9248). EPA interprets the Court's decision in *NRDC* v. *EPA* as only allowing removal credits for a pollutant if EPA has either regulated the pollutant in part 503 or established a concentration of the pollutant in sewage sludge below which public health and the environment are protected when sewage sludge is used or disposed.

The part 503 sewage sludge regulations allow four options for sewage sludge disposal: (1) Land application for beneficial use, (2) placement on a surface disposal unit, (3) firing in a sewage sludge incinerator, and (4) disposal in a landfill which complies with the municipal solid waste landfill criteria in 40 CFR part 258. Because pollutants in sewage sludge are regulated differently depending upon the use or disposal method selected, under EPA's pretreatment regulations the availability of a removal credit for a particular pollutant is linked to the POTW's method of using or disposing of its sewage sludge. The regulations provide that removal credits may be potentially available for the following pollutants:

(1) If POTW applies its sewage sludge to the land for beneficial uses, disposes of it in a surface disposal unit, or incinerates it in a sewage sludge incinerator, removal credits may be available for the pollutants for which EPA has established limits in 40 CFR part 503. EPA has set ceiling limitations for nine metals in sludge that is land applied, three metals in sludge that is placed on a surface disposal unit, and seven metals and 57 organic pollutants in sludge that is incinerated in a sewage sludge incinerator. (40 CFR 403.7(a)(3)(iv)(A)).

(2) Additional removal credits may be available for sewage sludge that is land-applied, placed in a surface disposal unit, or incinerated in a sewage sludge incinerator, so long as the concentration of these pollutants in sludge do not exceed concentration levels established in part 403, Appendix G, Table II. sewage sludge that is land applied, removal credits may be available for an additional two metals and 14 organic pollutants. sewage sludge that is placed on a surface disposal unit, removal credits may be available for an additional seven metals and 13 organic pollutants. sewage sludge that is incinerated in a sewage sludge incinerator, removal credits may be available for three other metals (40 CFR 403.7(a)(3)(iv)(B)).

(3) When a POTW disposes of its sewage sludge in a municipal solid waste landfill that meets the criteria of 40 CFR part 258, removal credits may be available for any pollutant in the POTW's sewage sludge (40 CFR 403.7(a)(3)(iv)(C)).

Several iron and steel companies which are indirect dischargers to POTWs have sought removal credits for pollutants subject to categorical pretreatment standards but for which no sewage sludge standard (part 503, part 403, Appendix G-Table I) or maximum concentration (part 403, Appendix G—Table II) has been established. Specifically, these companies claim that phenols (4AAP) are consistently treated by POTWs and do not cause the sewage sludge to adversely affect human health and the environment. (See, *e.g.*, *LTV Steel* v. *EPA*, No. 94–1516 (7th Cir.)). Today's proposal, if finalized, would mean that removal credits for phenols (4AAP) would no longer be necessary, because there would no longer be a categorical pretreatment standard for that pollutant. However, for those pollutants which would be included in the categorical pretreatment standard, only those included in either part 403, Appendix G—Table I or Table II would be eligible for removal credits.

D. Production Basis for Calculation of Permit Limitations

1. Background

The effluent limitations guidelines and standards for BPT, BAT, NSPS, PSES, and PSNS proposed today are expressed as mass limitations in pounds/ton of product. The mass limitation is derived by multiplying an effluent concentration (determined from the analysis of treatment system performance) by a model flow appropriate for each subcategory expressed in gallons/ton of product, or gallons/day. The production normalized flows used to develop many of the limits in the proposed rule are considerably lower than those used to

develop currently applicable limits. Consequently, many of the proposed limitations are more stringent than the current limitations for the same operations, even though other components of the wastewater treatment system remains the same. The proposed limitations neither require the installation of any specific control technology nor the attainment of any specific flow rate or effluent concentration. A facility subject to today's proposed regulation can use various treatment alternatives or water conservation practices to achieve a particular effluent limitation or standard. The model treatment systems described here illustrate at least one means available to achieve the proposed effluent limitations guidelines and standards.

The NPDES permit regulations at § 122.45(f) require that NPDES permit effluent limitations be specified as mass effluent limitations (*e.g.*, lbs/day or kg/day), except under certain enumerated circumstances that do not apply here. In order to convert the proposed effluent limitations expressed as pounds/ton to a monthly average or daily maximum permit limit, the permitting authority would use a production rate with units of tons/day. The current part 420 and part 122.45(b)(2) NPDES permit regulations require that NPDES permit and pretreatment limits be based on a "reasonable measure of actual production." The production rates used for NPDES permitting for the iron and steel industry have commonly been the highest annual average production from the prior five year period prorated to a daily basis, or the highest monthly production over the prior five years prorated to a daily basis. Industry stakeholders have indicated that (1) EPA should put the method used to determine appropriate production rates for calculating allowable mass loadings into the regulation for consistency, so that the permit writers can all use the same basis; and (2) EPA should use a high production basis, such as maximum monthly production over the previous five year period or maximum design production, in order to ensure that a facility will not be out of compliance during periods of high production.

The NPDES permit regulations at 40 CFR 122.45(b)(2)(i) require that for existing sources mass effluent limitations calculated from production-based effluent limitations guidelines and standards must be based not on production capacity, but on a "reasonable measure of actual production." The current iron and steel regulation at 40 CFR 420.04 sets out the basis for calculating mass-based pretreatment requirements and requires that the pretreatment requirements also be based on a reasonable measure of actual production. That regulation provides the following examples of what may constitute a reasonable measure of actual production: the monthly average for the highest of the previous five years, or the high month of the previous year. Both values are converted to a daily basis (*i.e.*, tons/day) for purposes of calculating monthly average and daily maximum mass permit effluent limitations. Similar provisions exist in the national pretreatment regulations at 40 CFR 403.6(c)(3) for deriving mass-based pretreatment requirements.

Each of the above regulations requires that effluent limitations and pretreatment standards for new sources must be based on projected production. That approach is carried forward in this proposed regulation.

EPA believes that some NPDES and pretreatment permit production rates have been derived in a manner that is not consistent with the term "reasonable measure of actual production" specified at § 122.45(b)(2)(i), 403.6(c)(3), and 420.04. In some cases, maximum production rates for similar process units discharging to one treatment system were determined from different years or months, which may provide an unrealistically high measure of actual production. In EPA's view, this would occur if the different process units could not reasonably produce at these high rates simultaneously.

The ideal situation for the application of production-based effluent limitations and standards is where production is relatively constant from day-to-day or month-to-month. In this case, the production rate used for purposes of calculating the permit limitations would then be the average rate. However, in the case of the iron and steel industry, production rates are not constant and vary significantly based on factors such as fluctuations in marked demand for domestic products, maintenance, product changes, equipment failures, and facility modifications. As such, the typical production rate for individual mills vary significantly over time, especially over the customary five-year life of a permit.

The objective in determining a production estimate for a mill is to develop a reasonable measure of production which can reasonably be expected to prevail during the next term of the permit. This is used in combination with the production-based limitations to establish a maximum mass of pollutant that may be discharged each day and month. However, if the permit production rate is based on the maximum month, then the permit could allow excessive discharges of pollutants during significant portions of the life of the permit. These excessive allowances may discourage mills from ensuring optimal waste management, water conservation, and wastewater treatment practices during lower production periods. On the other hand, if the average permit production rate is based on an average derived from the highest year of production over the past five years, then mills may have trouble ensuring that their waste management, water conservation, and wastewater treatment practices can accommodate shorter periods of higher production. This might require mills to target a more stringent treatment level than that on which the limits were based during these periods of high production. To accomplish this mills would likely have to develop more efficient treatment systems, greater hydraulic surge capacity, and better water conservation and waste management practices during these periods.

2. Alternatives for Establishing Permit Effluent Limitations

EPA is soliciting comment on several alternative approaches that may result in more stringent mass-based permits for some mills with better protection of the environment for the entire life of a permit and may result in higher costs. Each alternative requires that production from unit operations that do not generate or discharge process wastewater shall not be included in the calculation of operating rates.

Alternative A: This is the basis for today's proposed limits. It retains the essential requirements of the current rule as described above (see § 420.3). However, today's proposal provides additional instructions for avoiding approaches that result in unrealistically high estimates of actual production by only considering production from all production units that could occur simultaneously (see § 420.3(c)). This may result in higher costs for those mills with current permit conditions based on production levels that are higher than levels that could occur simultaneously at multiple process units. However, these costs were included in the economic analysis for the 1982 I&S regulation as well as today's proposal.

Alternative B: The Agency is considering including in the rule a requirement for the permit writer to establish multi-tiered permit limits. Permit writers and control authorities

currently use their best professional judgment for establishing multi-tiered permits. The Agency has issued guidance for use in considering multi-tiered permits (see Chapter 5 of the "U.S. EPA NPDES Permit Writers' Manual," (EPA–833–8–96–003, December 1996) and Chapter 7 of the "Industrial User Permitting Guidance Manual," (EPA 833/R–89–001, September 29, 1989).

In situations where a single set of effluent limitations are not appropriate for the permit's entire period, a tiered permit may be established. One set of limits would apply for periods of average production along with other sets which take effect when there are significant changes in the average production rate. The guidance notes that a 10 to 15 percent deviation above or below the long-term average production rate is within the range of normal variability. Predictable changes in the long-term production higher than this range would warrant consideration of a tiered or multi-tiered permit. The iron and steel industry has a variable historical production rate where the permit modification process is not fast enough to respond to the need for higher or lower equivalent limits. example, many iron and steel mills have a characteristic historical average monthly production rate that varies between 60 to 95 percent of plant capacity. (Note that for a mill operating at 60 percent of capacity, a production increase to 95 percent of capacity would represent nearly a 60 percent jump in production.) In these cases, alternate effluent limitations might be established for average production rates associated, for example, with 75 and 95 percent of capacity.

Alternative C: To provide a basis for deriving NPDES and pretreatment permit production rates that is consistent with the term reasonable measure of actual production and that can be applied consistently for steel mills subject to part 420, EPA is also considering revising the definition of production. The modified definition of the NPDES and pretreatment permit production basis would be the average daily operating rate for the year with the highest annual production over the past five years, taking into account the annual hours of operation of the production unit and the typical operating schedule of the production unit, as illustrated by the following example:

Highest annual production from previous five years.	3,570,000 tons.
Operating hours	8,400 hours.
Hourly operating rate	425 tons/hour.
Average daily operating rate (24 hour day).	10,200 tons/day.

The above example is for a process unit that is operated typically 24 hours per day with short-term outages for maintenance on a weekly or monthly basis. steel processing facilities that are operated typically less than 24 hours per day, the average daily operating rate must be determined based on the typical operating schedule (*e.g.*, 8 hours per day for a facility operated one 8-hour turn (or shift) per day; 16 hours per day for a facility operated for two 8-hour turns per day). example:

Highest annual production from previous five years.	980,000 tons.
Operating hours	4,160 hours.
Hourly operating rate	235.6 tons/hour.
Average daily operating rate (16 hour day).	3,769 tons/day.

In this example, EPA recognizes that the approach could cause problems for a facility that was operated 16 hours/day at the time the permit was issued and then wished to change to 24 hours/day based on unforseen changes in market conditions. To address this issue, the approach could be combined with the tiered permit approach discussed above.

multiple similar process units discharging to the same wastewater treatment system with one NPDES or pretreatment permit compliance point (*e.g.*, two blast furnaces operated with one treatment and recycle system for process waters), under this approach the year with the highest annual production over the previous five years would be determined on the basis of the sum of annual production for both furnaces. Then, based on this year's average daily operating rate would be calculated as above independently for each furnace using total annual production and annual operating hours for each furnace. The daily production values would be summed to calculate the average daily operating rate for the combination of the two furnaces. example, consider the following production data:

	Furnace A	Furnace B	Total (tons)
1995	1,850,000	1,305,000	3,155,000
1996	1,675,000	1,425,000	3,100,000
1997	1,760,000	1,406,000	3,166,000
1998	1,580,000	1,328,000	2,908,000
1999	1,825,000	1,380,000	3,205,000

Annual maximum production rates for each furnace and the combination of the two furnaces are underlined. In this example, 1999 was the maximum production year for the combination of the furnaces and the data from each furnace that year would be used to calculate the average daily operating rates. Had the 1995 data from Furnace A and the 1996 data from Furnace B been used in combination (3,275,000 tons), an unrealistic measure of actual production might have resulted if the two furnaces could not produce at these high levels concurrently. example, if the downstream intermediate production capacity effectively limits the combined production of the two furnaces. On the other hand, if the two furnaces could produce at these high levels concurrently, and might reasonablely be expected to over the forthcoming five-year permit cycle if strong market conditions prevailed, then the production measure based on the 1995 Furnace A data and the 1996 Furnace B data might not be an unrealistic measure of actual production.

In contrast to the previous example, for multiple process units that are not similar, but have process wastewater co-treated in one centralized wastewater treatment system with one NPDES or pretreatment permit compliance point, the year with the highest production over the previous five years would be determined separately for each production unit or combination of similar production units with the highest annual production. example, where process wastewater for BOF steelmaking, vacuum degassing, and

continuous casting operations are discharged through one NPDES permit or pretreatment permit compliance point. Consider the following example:

	BOF	V. Degasser	C. Caster (tons)
1995	2,675,000	1,305,000	2,658,000
1996	2,900,000	1,600,000	2,885,000
1997	3,150,000	1,690,000	3,140,000
1998	3,280,000	1,668,000	3,270,000
1999	3,225,000	1,380,000	3,215,000

In this example, 1998 production data for the BOF, 1997 data from the vacuum degasser, and 1998 data for the continuous caster would be used to develop the NPDES permit effluent limitations. An analogous situation would be for a steel finishing plant with acid pickling, cold rolling and electroplating operations.

The permit applicant would, under this alternative, need to provide the following information with its permit application or pretreatment report: for each process operation regulated, the average daily operating rate determined in accordance with § 420.3, including the underlying production data and operating schedule information necessary to calculate the average daily operating rate; and, sufficient information to identify each process operation in terms of the definitions of process operations set out in this part.

Alternative D: The Agency is considering establishing production-based maximum monthly average effluent limitations and standards in combination with daily-maximum concentration-based effluent limitations and standards. Under this alternative, the maximum monthly average NPDES permit and pretreatment mass basis requirements would be determined using the part 420 production-based standards in combination with a reasonable measure of actual production, such as Alternative C above. However, the daily-maximum requirements would be in the form of effluent concentrations that would be included in part 420 in lieu of the daily-maximum production-based mass effluent limitations guidelines and standards. The daily maximum concentrations set out as effluent limitations guidelines and standards would be those concentrations that were used to develop the proposed production-based mass effluent limitations guidelines and standards.

The Agency believes this approach would effectively address the potential issue cited above regarding short-term peaks in production under most circumstances. There would be no additional burden on the industry and permit writers for applying for and writing NPDES or pretreatment permits. Permit authorities may need to revise their automated compliance tracking systems to account for both mass and concentration limitations at the same outfall, which is a common feature in many NPDES and pretreatment permits issued prior to this proposal.

This approach would also provide some flexibility for the industry where, because of historical conditions, relatively high volumes of storm water from intense rainfall events are collected and treated with process water. In some cases, the volume of storm water collected and treated may cause short-term peak discharge flows that exceed the normal process water discharge flow which may result in violation of daily-maximum limitations. On balance, the Agency believes that treatment of such storm water flows is beneficial. The combination of maximum monthly average mass limits and daily-maximum concentration limits would provide such flexibility.

EPA solicits comments about these alternatives to the proposed production bases for calculating NPDES permit effluent limitations and pretreatment requirements including comments on related costs and any technical difficulties that mills might have in meeting limits during short periods of high production. EPA also solicits other options for consideration.

E. Water Bubble

The "water bubble" is a regulatory flexibility mechanism described in the current regulation at 40 CFR 420.03 to allow for trading of identical pollutants at any single steel facility with multiple compliance points. The bubble has been used at some facilities to realize cost savings and/or for compliance. It is structured in a way to produce also a benefit for the environment.

As currently structured the water bubble has the following restrictions:

- Trades can be made only for like pollutants (*e.g.* lead for lead, not lead for zinc).
- Trades are subject to any applicable water quality-based effluent limitations.
- Each outfall must have specific fixed limitations
- Cokemaking and cold rolling are excluded from consideration for water bubble use.
- Each trade must result in a minimum net reduction amount of the amount traded (15% for TSS/Oil & Grease, 10% for toxic pollutants).
- Bubble restricted to existing sources.

While at present NPDES permits for only nine facilities have alternative effluent limitations derived from the water bubble, there may be increased interest in the water bubble with the promulgation of a revised part 420. With this in mind, EPA proposes making the following changes to the water bubble rule:

- Allow trades for cokemaking operations but only if the cokemaking alternative limitations are more stringent than the limitations in Subpart A. These more stringent limits would be offset by less stringent limits for some other operation. EPA is proposing to limit trades involving cokemaking in this way because it is concerned about co-occurring contaminants in cokemaking wastewaters for which limits are not being established (*e.g.*, benzo(b)fluoranthene, benzo(a)anthracene, and chrysene). Allowing a relaxation of the limits for cokemaking wastewater could allow undetected increases in discharges of these co-occurring contaminants that would not necessarily be offset by tighter limits on the regulated pollutants in another waste stream.
- Prohibit trades for sintering operations because of the presence of dioxins and furans in sinter wastewater unless the alternative limitations are more stringent than the sintering process wastewater limitations in subpart B. As with cokemaking, these more stringent sintering limits would be offset by less stringent limits on some

other waste stream. The logic for this restriction is the same as for cokemaking.

- Prohibit trades of oil and grease because of differences in the types of oil and grease used among the I&S operations (the finishing operations tend to use and discharge synthetic and animal fats and oils used to lubricate metal materials, the hot-end operations tend to discharge petroleum-based oil and grease used to lubricate machinery, and cokemaking operations tend to discharge oil and grease containing polynuclear aromatics generated by the combustion of coal).
- Allow trades for cold rolling operations.
- Allow trades for new, as well as existing sources. Since the existing source environmental gain is 10 percent for all parameters except for TSS which is 15 percent, EPA is considering whether a higher net gain, *e.g.*, 20 percent, is appropriate for new sources given their flexibility in design.

EPA is proposing to change the current regulations to prohibit trading between outfalls of oil and grease. As noted above, EPA is concerned that different types of oil and grease may be discharged by different process units, and that trading might thus allow an increase in a more environmentally harmful type of oil and grease (*e.g.*, petroleum based), with the offsetting reduction being from a less harmful type (*e.g.*, animal fats). EPA recognizes that facilities will generally identify trades that save them money. EPA has no data to suggest that the most economically beneficial trading opportunities (*i.e.*, those likely to be used by facilities) would systematically either decrease or increase the most harmful types of oil and grease. Giving the existing requirement for a 15 percent net decrease of oil and grease across all outfalls if trading is utilized, it may well be the case that even with the possibility that an individual trade might allow for an increase in, say, petroleum-based oil and grease, the net effect of trading would be both beneficial to the environment and provide cost saving opportunities to facilities. EPA requests comment on whether trading should continue to be allowed for oil and grease, including the current 15 percent (or greater) net reduction.

Potential cost impacts associated with changes in the water bubble have been accounted for in the estimated capital and operating and maintenance costs prepared for the economic impact and cost-effectiveness analyses.

EPA requests comment on the modified restrictions on the use of the bubble, particularly on the larger environmental gain through the use of the bubble that would be required for new sources.

EPA proposes to retain the other restrictions specified in the current water bubble rule.

XI. Other Coinciding Agency Activities

A. 40 CFR Part 63, Subpart L—National Air Emission Standard for Coke Oven Batteries

Promulgated on October 27, 1993, this regulation established coke oven emission limits for lids (% leaking lids), offtakes PLO (% leaking offtakes), charging (log), and doors PLD (% leaking doors). The regulation established two alternate tracks of limits through which coke ovens batteries may achieve compliance; the Maximum Achievable Control Technology (MACT) track and the Lowest Achievable Emissions Rate (LAER) extension track. All coke manufacturing facilities have chosen a specific track and, where appropriate, are attempting to conform with these regulations. Of the 58 by-product recovery coke batteries in operation in the United States, 50 have selected the LAER extension track, which subjects them to requirements through the year 2020. The LAER extension track limits may become more stringent in 2010. These plants will not be affected by the residual Risk Standards when promulgated. The remaining eight by-product recovery coke batteries that selected the MACT Track Limits must comply with Residual Risk Standards after they are promulgated.

B. Coke Ovens: Pushing, Quenching, and Battery Stacks Proposed Rule

EPA is developing a regulation under section 112(d) of the Clean Air Act (CAA) to reduce emissions from pushing, quenching, and battery stacks at coke plants and plans to propose the rule in November 2000 and promulgate it in November 2001. This rule would establish requirements to control coke oven emissions and would apply to all coke batteries at coke plants that are major sources of hazardous air pollutant (HAP) emissions or that are part of a facility that is a major source of HAP emissions. A major source means any stationary source or group of stationary sources within a contiguous area and under common control that emits or has the potential to emit considering controls, in aggregate, 10 tons or more per year of any single HAP or 25 tons per year of more of any combination of HAP.

The rule includes both emission limitations and work practice standards. Relative to pushing, two options are proposed. One option would require sources to meet an opacity limit based on the daily observations of four pushes. The other option is a work practice standard that places failing ovens under scrutiny until they are repaired or taken out of service. The proposed rule also includes emission limits for particulate matter (PM), as a surrogate for coke oven emissions, for control devices applied to pushing emissions. To address quenching emissions, sources would be required to use clean water as makeup water, equip quench towers with baffles, and inspect and repair baffles on an on-going basis. battery stacks, the proposed rule establishes opacity limits and requires the installation and operation of continuous opacity monitors (COM). In addition, all batteries would be required to operate at all times according to an operation and maintenance plan to ensure good operation and maintenance of batteries and control equipment. The proposed rule also includes notification, recordkeeping, and reporting requirements.

C. Steel Pickling—HCL Process

The Steel Pickling National Emission Standards for Hazardous Air Pollutants (NESHAP) final rule was published on June 22, 1999, 64 FR, 33202–33223, to reduce emissions of toxic air pollutants from sources in steel pickling facilities.

The steel pickling rule applies to all facilities that pickle steel using hydrochloric acid or that regenerate hydrochloric acid and (a) that are major sources or (b) are part of a facility that is a major source. The EPA estimates that 62 of the 80 steel pickling facilities using hydrochloric acid and all 8 acid regeneration plants currently in operation (six of which are co-located with pickling facilities) are affected by this rule. The steel pickling rule does not apply to any pickling line that uses an acid other than hydrochloric acid, an acid solution containing less than 6 percent HCl, or at a temperature less than 100 °F.

Existing plants have up to two years from the effective date of the final rule to comply with its requirements. If necessary, the owner or operator of an affected facility may request that EPA (or the applicable regulatory authority in a State with an approved permit program) grant one additional year to install controls. The EPA's rule establishes limitations for hydrochloric acid and chlorine emissions and offers flexibility to the industry by providing

cost-effective options for both emissions control and monitoring.

Pickling facility operators may comply with the emission limitation for hydrochloric acid by meeting either an emissions reduction target or a concentration standard. This option allows operators to comply with the rule under a wide variety of acid bath and ventilation conditions. Emissions reductions for hydrochloric acid are based on wet scrubber control technology, which provides the facility operator the option of recycling hydrochloric acid from the scrubber effluent.

Interested parties can download the final rule from EPA's web site on the Internet under "recent actions" at the following address: http://www.epa.gov/ttn/oarpg. further information about the rule, contact James Maysilles of the EPA's Office of Air Quality Planning and Standards at 919–541–3265.

D. Integrated Iron and Steel Manufacturing NESHAP

EPA plans to propose an Integrated Iron and Steel Manufacturing NESHAP under section 112(d) of the CAA applicable to sinter plants, blast furnaces, BOF shops and ancillary operations in November 2000 and to promulgate it in November 2001. The EPA has included integrated iron and steel manufacturing facilities on the list of major sources of hazardous air pollutant (HAP) emissions under section 112(c) of the CAA. Information on this action is at: http://www.epa.gov/ttn/oarp.

You may be subject to the rule if you own or operate an integrated iron and steel facility that is a major source of HAP emissions, or that is part of a facility that is a major source of HAP emissions. This source category includes sinter production, iron production, and steel production.

XII. Related Acts of Congress, Executive Orders, and Agency Initiatives

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has between 500 and 1500 employees (each firm was assigned the relevant definition depending on SIC determination and based on SBA size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of today's proposed rule on small entities, including consideration of alterative regulatory approaches being proposed, I certify that this action will not have significant economic impact on a substantial number of small entities. EPA identified an estimated 34 small companies that may be affected by the rule among the estimated 115 total companies potentially affected by the rule. EPA has fully evaluated the economic impact of the proposed rule on affected small companies. In some instances, EPA proposes alternative regulatory approaches. This analysis reflects the most stringent of the alternative options. small companies, EPA examined the compliance cost to revenue ratio to identify the potential impact of the rule on small companies. EPA has determined that the range of compliance costs to revenues is between 0 and 1.91 percent with only three companies experiencing an impact of greater than 1%, using the most stringent set of co-proposed options. Furthermore, an economic achievability analysis was conducted using a discounted cash flow approach for facility impacts analysis and the Altman Z test for the firm impacts analysis (for a full discussion, see Section VI). EPA projects that one small company may incur an impact such as facility closure or firm failure. No small governments are regulated by this action.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. The Agency has attempted to mitigate the potential impacts of the proposed rule to all entities, including small entities, by measures such as simplifying the structure of the existing regulation and encouraging the co-treatment of compatible wastewaters. EPA has engaged in very substantive outreach to the potentially affected entities via public meetings and trade association consultations. The outreach activities are described in detail in Section IV.D.5 of this preamble. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-

effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA has estimated total annualized costs of the rule as between $56.5 million to $61.4 million (1999 $, pre-tax). Accordingly, today's proposal is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has, however, sought meaningful and timely input from the private sector, states, and small governments on the development of this notice. Prior to issuing this proposed rule, EPA met with members of the private sector as discussed earlier in the preamble.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments, including tribal governments. EPA recognizes that small governments may own or operate POTWs that will need to enter into pretreatment agreements with the indirect dischargers of the Iron and Steel industry that would be subject to this proposed rule. However, EPA currently estimates that the added costs of entering into or modifying existing pretreatment agreements will be minimal. The main costs resulting from this proposed rule will fall upon the private entities that own and operate the Iron and Steel facilities.

D. Paperwork Reduction Act

The proposed iron and steel effluent limitations guidelines and standards contain no information collection activities and, therefore, no information collection request will be submitted to OMB for review under the provisions of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

E. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, (Pub L. 104–113 sec. 12(d) 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. The rule requires dischargers to measure for 7 metals, 4 organic contaminants, TSS, Oil and Grease (HEM), thiocyanate, total cyanide, total residual chlorine, ammonia as Nitrogen, 2,3,7,8-TCDF, nitrate and pH. EPA performed a search to identify potentially voluntary consensus standards that could be used to measure the analytes in today's final guideline. EPA's search revealed that consensus standards have already been promulgated in tables at 40 CFR 136.3 for measurement of all analytes except thiocyanate.

Today, EPA is proposing to promulgate two consensus standards for thiocyanate, Method 4500–CN M (Standard Methods for the Examination of Water and Wastewater, 20th Edition, 1998) and D4374–98 (Annual Book of ASTM Standards, volume 11.02, 1999). EPA welcomes comments on this aspect f the proposed rulemaking and, specifically, invites the public to identify additional potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

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

The Executive Order "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to E.O. 13045 because it is not "economically significant" as defined under Executive Order 12866 (EPA estimates that it would have an annual effect on the economy of less than $100 million), and is a technology-based rule that does not involve health standards or address an environmental health or safety risk that may have a disproportional effect on children.

G. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule establishes effluent limitations imposing requirements that apply to iron and steel facilities when they discharge process wastewater or introduce process wastewater to a POTW. EPA has determined that there are no iron and steel facilities owned and operated by State and local governments that would be subject to this proposed rule; therefore, this proposed rule will not impose any treatment technology costs on State or local governments. Further, this proposed rule will only affect State and local governments incidentally in their capacity as implementers of CWA permitting programs. Therefore, the proposed rule, at most, imposes only

minimal administrative costs on States that have authorized NPDES programs and on local governments that are administering approved pretreatment programs. (These State and local governments must incorporate the new effluent limitations guidelines and standards in new and reissued NPDES permits or local pretreatment orders or permits). Thus, Executive Order 13132 does not apply to this rule.

Although Executive Order 13132 does not apply to this rule, EPA did consult with State government representatives in developing this proposal, as discussed in Section IV of this document. A summary of the concerns raised during consultation and EPA's response to those concerns is provided in Section IV.D.5 of this preamble. In addition, in the spirit of this Executive Order and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments nor does it impose substantial direct compliance costs on them. EPA has determined that no communities of Indian tribal governments are affected by this rule. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. Plain Language Directive

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. We invite your comments on how to make this proposed rule easier to understand. example: Have we organized the material to suit your needs? Are the requirements in the rule clearly stated? Does the rule contain technical language or jargon that isn't clear? Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? Would more (but shorter) sections be better? Could we improve clarity by adding tables, lists, or diagrams? What else could we do to make the rule easier to understand?

XIII. Solicitation of Data and Comments

A. Introduction and General Solicitation

EPA invites and encourages public participation in this rulemaking. The Agency asks that comments address any perceived deficiencies in the record of this proposal and that suggested revisions or corrections be supported by data.

The Agency invites all parties to coordinate their data collection activities with EPA in order to facilitate mutually beneficial and cost-effective data submissions. EPA is interested in participating in study plans, data collection and documentation. Please refer to the " Further Information" section at the beginning of this preamble for technical contacts at EPA. Comments on the proposal must be received by February 26, 2001.

B. Specific Data and Comment Solicitations

1. Revised Production Basis for Regulation

EPA believes that some NPDES and pretreatment permit production rates have been derived in a manner that is not consistent with the term "reasonable measure of actual production" specified at §§ 122.45(b)(2)(i), 403.6(c)(3), and 420.04. Thus EPA is soliciting comment on four alternate approaches for establishing permit effluent limitations. These are described in detail in Section X.D.2, and summarized below:

Alternative A: Retaining essential requirements of the current rule while providing additional instructions for avoiding unrealistically high estimates of actual production

Alternative B: Including a requirement for the permit writer to establish multi-tiered permit limits

Alternative C: Revising the definition of production to be the average daily operating rate for the year with the highest annual production over the past five years

Alternative D: Establishing production-based maximum monthly average effluent limitations and standards in combination with daily-maximum concentration-based effluent limitations and standards.

2. Revised Subcategorization

The revised subcategorization described in Section IV.E simplifies the structure and use of the regulation. The proposed subcategorization removes defunct manufacturing processes, eliminates subsegments in the hot forming and finishing subcategories, creates a new subcategory for non-integrated steelmaking and hot forming processes, and creates new subcategories or segments for manufacturing processes not currently regulated. The Agency requests comments on the new subcategorization and its effects on the implementation of today's proposed rule.

3. Applicability Changes

As described in Section III, the Agency determined that certain facilities covered by the current Iron and Steel rule have manufacturing processes that more closely resemble those in facilities to be covered by the MP&M rule. These processes include: The cold forming for steel bar, rod, wire, pipe or tube; batch hot dip coating of steel; and wire drawing and coating. EPA is proposing to move these operations into the MP&M category, which will be regulated under 40 CFR part 438. The Agency also proposes coverage of the following operations not covered by the current Iron and Steel rule: continuous electroplating of flat steel products, direct-reduced ironmaking, briquetting, and steel forging operations. EPA solicits comments on these proposed applicability changes. EPA also solicits comments on its proposal to regulate continuous strip electroplating operations in the part 420.

4. Changes in Water Bubble

As discussed in Section X.E, EPA is proposing making the following changes to the water bubble rule:

- Allow trades for cokemaking where more stringent limits for cokemaking would result;
- Prohibit trades for sintering operations where less stringent

limitations for sintering would result, since discharge of dioxins could result;

- Allow trades for cold rolling operations which are currently excluded from the water bubble provisions; and
- Prohibit trades for oil & grease.

The Agency solicits comments on the economic and environmental impacts of the proposed changes.

5. Approach to PSES and PSNS for ammonia-N in Ironmaking Wastewaters

In Section IX.B, EPA proposes regulatory flexibility that would allow indirectly discharging ironmaking operations to not have to meet the pretretment standards for ammonia-N if the facility certifies to the pretreatment control authority under 40 CFR 403.12 that they discharge to POTWs with the capability, when considered together with the indirect discharger's removals, to achieve removals at least equivalent to those expected under BAT for ammonia-N. The Agency solicits comment on this certification alternative, particularly from POTWs currently receiving process wastewaters from ironmaking operations.

6. Alternative Approaches for Regulating Integrated and Stand-Alone Hot ming Mills

EPA is proposing two different BAT approaches for the carbon and alloy segment of the Integrated and Stand-Alone Hot ming Subcategory. The technology basis for these options is identical and consists of a scale pit with oil skimming, roughing clarifier, cooling tower with high-rate recycle and mixed-media filtration of blowdown.

The difference between BAT Option A and BAT Option B involves the amount of time that facilities in the segment would have to achieve BAT limitations. Under BAT Option A, all facilities would be subject to BAT limitations as soon as they are placed in the facility's NPDES permit. Under BAT Option B, in contrast, all facilities could obtain additional time to achieve BAT limitations. If EPA ultimately determines in April 2002 that BAT Option A is not economically achievable for the segment as a whole, it may decide to take final action based on BAT Option B.

more details on Options A and B, refer to Section IX.D. EPA solicits comment on both of these options. EPA also solicits comment on whether there is any rational basis to distinguish among mills in this segment, so as to apply BAT Option B only to a specific subsegment of mills for which the model technology is not economically achievable at the time of promulgation.

7. Compliance Monitoring Location for pH

Stakeholders have indicated that permit authorities often interpret the current regulation to require application of pH limitations at internal monitoring locations, prior to additional treatment or mixing with other wastewater. EPA is proposing to allow permit authorities the flexibility to establish pH effluent limitations at final outfalls such that redundant and unnecessary pH neutralization can be avoided.

8. ELGs and Standards in lbs/ton vs kg/kkg or lbs/1000 lbs

The current part 420 regulation and other previous mass-based regulations have presented pollutant limitations in terms of kilograms of allowable pollutant discharge per thousand kilograms of production (kg/kkg), also expressed as pounds of allowable pollutant discharge per thousand pounds of production (lbs/1,000 lbs). Today's proposed regulation presents pollutant limitations in terms of pounds of allowable pollutant discharge per ton of production (lbs/ton). The Agency made this change to express the limitations in terms of the production value that is a standard throughout the industry. The Agency requests comments on this format.

9. POTW Performance Criteria

In Section IX.A(2) and (3), EPA describes the traditional methodology used to determine POTW performance and the proposed revisions to that methodology, respectively. EPA used the traditional methodology to estimate POTW percent removals, which are a component of the pass-through methodology used to identify the pollutants to be regulated for PSES and PSNS and the analysis to determine net pollutant reductions. Previously, EPA edited data at or near the minimum level for POTW performance based on the editing criteria used to calculate BAT limitations. EPA is considering revising the POTW data editing criteria. Given the range of analytical minimum levels and their influence on calculated percent removals, EPA is considering several editing alternatives, detailed in Section IX.A(3). The Agency solicits comments on potential revisions to the pass-through methodology.

10. Mercury and Selenium in Cokemaking Wastewater

EPA is proposing regulation of mercury and selenium at cokemaking plants based on toxicity and presence in cokemaking wastewaters as discussed in Section IX.B(1) Currently, permits for several cokemaking sites require monitoring for mercury and selenium. EPA solicits comments on the need for limits for mercury and selenium, including any additional data available to support or oppose the need for limits.

11. Regulatory Approach for Dioxins and Furans at Sinter Plants

In Section IX, dioxins and furans were identified as pollutants of concern for sinter plants using wet air pollution controls. EPA proposes to limit dioxins and furans in wastewaters from sinter plants. The proposed limit would be for 2,3,7,8–TCDF and would be set to less than the minimum level. EPA proposes to require compliance monitoring after primary treatment of sinter plant wastewaters or after sinter plant and blast furnace wastewaters are co-treated, but before any additional process or non-process flows are combined with the wastewater. EPA solicits comments on this proposed regulatory approach. The Agency is also considering whether to limit dioxins and furans found in sinter plant wastewaters on the basis of 2,3,7,8-TCDD TEQs (toxicity equivalents) which would measure all of the 17 dioxin and furan congeners with chlorine substitutions at the 2,3,7 and 8 lateral positions. This is consistent with the international toxicity equivalents factors approach; consistent with EPA's approach to regulating dioxins in other media and for conducting risk assessments; and consistent with EPA's source characterization work to assess the national inventory of dioxin releases to environmental media.

12. Consideration of Zero Discharge as NSPS for the Non-Integrated Steelmaking and Hot ming Subcategory

As described in Section IV.F(5)c, non-integrated mills have demonstrated lower discharge flow rates than continuous casters and hot forming mills at integrated and stand alone mills. Many non-integrated sites report zero discharge of process wastewater using high-rate recycle systems for the entire mill. EPA determined that new facilities can incorporate process water treatment and water pollution control at the design stage, thus avoiding costs associated with retrofit situations. The Agency solicits comments on establishing zero discharge limitations at NSPS for the Non-Integrated Steelmaking and Hot ming Subcategory.

13. Zero Discharge for all EAFs

As described in Section IV.F(5)a, the proposed Non-Integrated Steelmaking and Hot ming Subcategory includes a segment for EAF steelmaking. Since the only EAF remaining in the United States

that discharges wastewater is now only used for emergency purposes, EPA did not cost the site to replace the wet air pollution control unit. If the unit is still being used at the time this rule is promulgated, BPJ will apply. The Agency solicits comments on excluding a segment for EAFs with wet air pollution control.

14. Surface Quality Issues for Steel Finishing Operations

the purposes of this proposal, the Agency has selected the median production-normalized flow rate (PNF) reported by the industry for steel finishing operations. This approach was intended to address product quality issues associated with water use. A number of mills engaging in steel finishing operations claim to need a relatively high PNF (*i.e.*, higher than the median PNF selected by EPA for this proposed subcategory). Therefore, the Agency requests comments on surface quality and any other issues that impact water use and necessitate high water use rates in steel finishing operations.

15. Limits for Nitrates/Nitrites at Stainless Finishing Facilities

In Section IX, nitrate/nitrite was identified as a pollutant of concern for stainless steel acid pickling operations where nitric acids and combinations of nitric and hydrofluoric acids are used for surface treatments for various grades of stainless steels. The model BAT technology for stainless steel finishing operations includes acid purification units for recovery and reuse of spent nitric and nitric/hydrofluoric acid pickling solutions. EPA is considering developing a limit, based on acid purification technology, for nitrate/nitrite (in the form of nitrate-nitrite-N) for stainless steel finishing operations with combination acid pickling. EPA solicits effluent quality monitoring data from stainless steel acid pickling operations using acid purification and from POTWs that receive wastewater from these operations.

EPA is aware of other process changes which may result in decreased nitrate concentrations in stainless steel acid pickling wastewaters, including chemical substitution for nitric acid. EPA solicits information on this or any other process capable of achieving substantial reduction or elimination of nitrates from stainless steel pickling wastewaters, particularly process details; for which grades of stainless steel the process can be used; performance data; and detailed cost estimates.

16. Revision of Subcategorization for BPT Effluent Limitations

EPA is considering converting the existing mass-based BPT limitations for conventional pollutants TSS and O&G to corresponding concentration-based BPT limitations via the production normalized flows used to develop the existing BPT limitations. By this conversion, EPA does not intend to change the substance of the current BPT limitations in any way. Rather, EPA intends to simplify application of the current BPT limitations in view of the new subcategorization arrangement. EPA solicits comments on this approach.

17. Best Management Practices

EPA is planning to include in guidance documents or in the technical development document for the final rule a number of recommended Best Management Practices (BMPs) for use in the NPDES and pretreatment programs. These BMPs would not be codified in part 420, but could be used by permit writers on a facility-by-facility basis as deemed appropriate to address site-specific issues. Among the BMPs being considered in this fashion are those listed at Section 6.5 of the Preliminary Study (EPA 821–R–95–037) and others dealing with management of oily wastewaters from hot forming operations and periodic reviews and assessments of the integrity of process water collection systems and wastewater treatment system operations. EPA solicits comments on this approach.

18. Cash Flow in the Economic Analysis

In the economic analysis, cash flow at the site-level is defined as the sum of net income and depreciation. The measure is widely used within industry in evaluating capital investment decisions because both net income and depreciation (which is an accounting offset against income, but not an actual cash expenditure) are potentially available to finance future investment. However, assuming that total cash flow is available over an extended time horizon (for example, 15 years) to finance investments related to environmental compliance could overstate a site's ability to comply. In particular, the cost of capital equipment (not associated with regulatory compliance) is not netted out of cash flow, as it is of income through the subtraction of depreciation. Thus, any costs associated with either replacing existing capital equipment, or repaying money that was previously borrowed to pay for it, are omitted from the site-level analysis. EPA solicits comment on its use of cash flow as a measure of resources available to finance environmental compliance and suggestions for alternative methodologies.

Appendix A: Definitions, Acronyms, and Abbreviations Used in This Notice

Administrator—The Administrator of the U.S. Environmental Protection Agency.

Agency—The U.S. Environmental Protection Agency.

Average Monthly Discharge Limitation—The highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during the calendar month divided by the number of "daily discharges" measured during the month.

BAT—The best available technology economically achievable, applicable to effluent limitations for industrial discharges to surface waters, as defined by section 304(b)(2)(B) of the CWA.

BCT—The best control technology for conventional pollutants, applicable to discharges of conventional pollutants from existing industrial point sources, as defined by section 304(b)(4) of the CWA.

BPT—The best practicable control technology currently available, applicable to effluent limitations, for industrial discharges to surface waters, as defined by section 304(b)(1) of the CWA.

Clean Water Act (CWA)—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. Section 1251 *et seq.*), as amended *e.g.*, by the Clean Water Act of 1977 (Pub. L. 95–217), and the Water Quality Act of 1987 (Pub. L. 100–4).

Clean Water Act (CWA) Section 308 Questionnaire—A questionnaire sent to facilities under the authority of section 308 of the CWA, which requests information to be used in the development of national effluent guidelines and standards.

Conventional Pollutants—Constituents of wastewater as determined by section 304(a)(4) of the CWA (and EPA regulations), *i.e.*, pollutants classified as biochemical oxygen demand, total suspended solids, oil and grease, fecal coliform, and pH.

Daily Discharge—The discharge of a pollutant measured during any calendar day or any 24-hour period that reasonably represents a calendar day.

Direct Discharger—A facility that discharges or may discharge treated or untreated wastewaters into waters of the United States.

Effluent Limitation—Under CWA section 502(1), any restriction, including schedules of compliance, established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean (CWA sections 301(b) and 304(b)).

Existing Source— this rule, any facility from which there is or may be a discharge of pollutants, the construction of which is commenced before the publication of the final regulations prescribing a standard of performance under section 306 of the CWA.

Facility—All contiguous property owned, operated, leased, or under the control of the same person or entity.

Hazardous Waste—Any waste, including wastewater, defined as hazardous under RCRA, TSCA, or any state law.

Indirect Discharger—A facility that discharges or may discharge wastewaters into a publicly-owned treatment works.

LTA (Long-Term Average)— purposes of the effluent guidelines, average pollutant levels achieved over a period of time by a facility, subcategory, or technology option. LTAs were used in developing the effluent limitations guidelines and standards in today's proposed regulation.

Minimum Level—the lowest level at which the entire analytical system must give a recognizable signal and an acceptable calibration point for the analyte.

NAICS—North American Industry Classification System. NAICS was developed jointly by the U.S., Canada, and Mexico to provide new comparability in statistics about business activity across North America.

National Pollutant Discharge Elimination System (NPDES) Permit—A permit to discharge wastewater into waters of the United States issued under the National Pollutant Discharge Elimination system, authorized by section 402 of the CWA.

Non-Conventional Pollutants—Pollutants that are neither conventional pollutants nor priority pollutants listed at 40 CFR part 401.

Non-Water Quality Environmental Impact—Deleterious aspects of control and treatment technologies applicable to point source category wastes, including, but not limited to air pollution, noise, radiation, sludge and solid waste generation, and energy used. NSPS—New Sources Performance Standards, applicable to industrial facilities whose construction is begun after the effective date of the final regulations (if those regulations are promulgated after April 26, 2001). EPA is scheduled to take final action on this proposal in April 2002. See 40 CFR 122.2.

Outfall—The mouth of conduit drains and other conduits from which a facility effluent discharges into receiving waters.

Pass Through—A pollutant is determined to "pass through" a POTW when the average percentage removed by an efficiently operated POTW is less than the average percentage removed by the industry's direct dischargers that are using well-designed, well-operated BAT technology.

Point Source—Any discernable, confined, and discrete conveyance from which pollutants are or may be discharged. See CWA section 502(14).

Pollutants of Concern (POCs)—Pollutants commonly found in iron and steel wastewaters. Generally, a chemical is considered as a POC if it was detected in untreated process wastewater at 10 times the minimum level (ML) in more than 10% of the samples.

Priority Pollutant—One hundred twenty-six compounds that are a subset of the 65 toxic pollutants and classes of pollutants outlined in section 307 of the CWA. See 40 CFR part 403, Appendix A (reprinted after 40 CFR 423.17).

PSES—Pretreatment standards for existing sources of indirect discharges, under Section 307(b) of the CWA, applicable to indirect dischargers that commenced construction after December 27, 2001. See 40 CFR 403.3 (K)(1).

PSNS—Pretreatment standards for new sources under section 307(c) of the CWA.

Publicly Owned Treatment Works (POTW)—Any device or system, owned by a state or municipality, used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature that is owned by a state or municipality. This includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment (40 CFR 122.2).

RCRA—The Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C. 6901 *et seq.*), which regulates the generation, treatment, storage, disposal, or recycling of solid and hazardous wastes.

SIC—Standard Industrial Classification (SIC)—A numerical categorization system used by the U.S. Department of Commerce to catalogue economic activity. SIC codes refer to the products, or group of products, produced or distributed, or to services rendered by an operating establishment. SIC codes are used to group establishments by the economic activities in which they are engaged. SIC codes often denote a facility's primary, secondary, tertiary, etc. economic activities.

Variability Factor—Used in calculating a limitation (or standard) to allow for reasonable variation in pollutant concentrations when processed through extensive and well designed treatment systems. Variability factors assure that normal fluctuations in a facility's treatment are accounted for in the limitations. By accounting for these reasonable excursions above the long-term average, EPA's use of variability factors results in limitations that are generally well above the actual long-term averages.

Zero or Alternative Discharge—No discharge of pollutants to waters of the United States or to a POTW. Also included in this definition is disposal of pollutants by way of evaporation, deep-well injection, off-site transfer, and land application.

List of Subjects in 40 CFR Part 420

Environmental protection, Iron, Steel, Waste treatment and disposal, Water pollution control.

Dated: October 31, 2000.

Carol M. Browner,

Administrator.

the reasons set out in the preamble, Title 40, Chapter I of the Code of Federal Regulations is amended by revising part 420 as follows:

Part 420—Iron and Steel Manufacturing Point Source Category

Sec.

Authority: Secs. 301, 304, 306, 307, 308, 402 and 501 of the Clean Water Act, as amended; 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342 and 1361.

§ 420.1 General applicability.

(a) This part applies to discharges and the introduction of pollutants to publicly owned treatment works (POTWs) resulting from the manufacture of metallurgical coke (furnace coke and foundry coke), sinter, iron, steel and semi-finishing steel products including hot and cold finished flat-rolled carbon and alloy and stainless steels; flat-rolled and other steel shapes coated with other metals or combinations of metals; plates; structural shapes and members; and hot rolled pipes and tubes. Manufacturing activities that may be subject to this part are generally reported under one or more of the following North American Industry Classification System (NAISC) codes: 32419, 331111, 331210, 331221 and 331222 (North American Industry Classification System, U.S. Office of Management and Budget, Washington, DC, 1997).

(b) This part does not apply to discharges and the introduction of pollutants to POTWs resulting from cold finished bar or cold finished pipe and tube operations; wire drawing or coating operations; or, stand-alone, hot-dipped coating operations for products other than flat-rolled products.

§ 420.2 General definitions.

As used in this part:

(a) The general definitions and abbreviations in 40 CFR part 401 shall apply, except as modified in this part.

(b) *Alloy steels* means steels which contain one or more of the following alloying elements in excess of the specified percentage: Manganese, 1.65%; silicon, 0.5%; copper, 0.6%; or in which a definite range or a definite minimum quantity of any of the following elements is specified or required within the limits of the recognized field of constructional alloy steels: aluminum, boron, chromium (less than 10%), cobalt, lead, molybdenum, nickel, niobium (columbium), titanium, tungsten, vanadium, zirconium, or any other alloying element added to obtain a desired alloying effect.

(c) *Billet* means a semi-finished piece of steel, usually smaller than a bloom, resulting from hot-rolling an ingot. The piece may be square, but not more than twice as wide as thick . It is normally used for "long" products, such as bars, channels or other structural shapes.

(d) *Bloom* means a semi-finished piece of steel resulting from rolling or forging an ingot. The piece is square, or not more than twice as wide as thick, and has a cross-sectional area of at least 8 square inches but usually 36 square inches or more.

(e) *Carbon steels* are those steels for which no minimum content of elements other than carbon is specified or necessary to obtain a desired alloying effect and when the maximum content for any of the following elements do not exceed the percentage specified: Manganese, 1.65%; silicon, 0.5%; copper, 0.6%.

(f) *Maximum daily* means the highest allowable discharge of wastewater pollutants during any one day.

(g) *Maximum monthly average* means the highest allowable average of daily discharges of wastewater pollutants over a calendar month, and is calculated as the sum of all daily values measured during a calendar month divided by the number of daily values measured during that month.

(h) *Plate* means finished sheet steel with a width of more than 8 inches and a thickness ranging from 0.25 inch to more than 12 inches.

(i) *Regulated parameters with approved methods of analysis in Table 1B at 40 CFR 136.3* are defined as follows:

(1) *Ammonia* (as N) means ammonia reported as nitrogen.

(2) *Chromium* means total chromium.

(3) *Chromium (VI)* means hexavalent chromium.

(4) *Copper* means total copper.

(5) *Cyanide* means total cyanide.

(6) *HEM* means oil and grease measured as hexane extractable material.

(7) *Lead* means total lead.

(8) *Mercury* means total mercury.

(9) *Nickel* means total nickel.

(10) *Nitrate+Nitrite (as N)* means nitrite and nitrate reported as nitrogen.

(11) *Selenium* means total selenium.

(12) *TRC* means total residual chlorine.

(13) *TSS* means total suspended solids.

(14) *Zinc* means total zinc.

(j) *Regulated parameters with approved methods of analysis in Table 1C at 40 CFR 136.3* are as follows:

(1) *Benzo(a)pyrene*

(2) *Naphthalene*

(3) *Phenol*

(k) *Regulated parameter with approved method of analysis by EPA Method 1613B* is defined as follows:

(1) 2,3,7,8-TCDF means 2,3,7,8-tetrachlorodibenzofuran.

(l) *Process wastewaters* are defined at 40 CFR 401.11.

(m) *Non-process wastewaters* mean utility wastewaters (for example, water treatment residuals); treated or untreated wastewaters from groundwater remediation systems; dewatering water for building foundations; and other wastewater streams not associated with a production process.

(n) *Rod* means a semi-finished length of steel with circular cross-section (diameter 0.25 inch or less) that is rolled from a billet and coiled for further processing. Rod is commonly drawn into wire products or used to make bolts and nails.

(o) *Semi-finished steel* means blooms, billets or slabs that are later worked into finished shapes (bar, rod, plate, sheet).

(p) *Sheet* means a thin flat steel shape created by hot-rolling a cast slab flat while maintaining the side dimensions. Sheets are within the following size limitations: 0.0499 to 0.2299 inches thick and 12 to over 48 inches width, and are often coiled.

(q) *Slab* means a semi-finished piece of steel resulting from hot-rolling an ingot into an oblong shape, which is relatively wide and thin.

(r) *Specialty steels* are steels containing alloying elements that are added to enhance the properties of the steel product when individual alloying elements (*e.g.*, aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, vanadium, zirconium) exceed 3%, or when the total of all alloying elements exceeds 5 percent. Specialty steel categories include: Electrical, alloy, stainless and tool.

(s) *Stainless* means steel containing 10% or more chromium, with or without other alloying elements. It is a trade name given to corrosion and heat resistant steel in which the chief alloying elements are chromium, nickel and silicon in various combinations and possibly a small per cent of titanium, vanadium, and other elements.

(t) *Strip* means thin flat steel resembling hot-rolled sheet, but normally narrower (up to 12 inches wide) and produced to more closely controlled thicknesses (0.0255 to 0.2299 inches).

§ 420.3 Calculation of NPDES and pretreatment permit effluent limitations.

(a) The following protocols shall be used when calculating the daily operating rate (reasonable meaure of actual production), except as specifically provided for in subparts A through G of this part:

(1) Production levels from unit operations that do not generate or discharge process wastewater shall not be included in the calculation of the daily operating rate.

(2) similar, multiple production facilities with process waters treated in the same process wastewater treatment system (*e.g.*, two blast furnaces equipped with one process water treatment and recycle system), the reasonable measure of production (daily operating rate) shall be determined from the combined production of the similar production facilities during the same time period.

(3) process wastewater treatment systems where wastewaters from two or more different production facilities (*e.g.*, blast furnaces and sintering) are co-treated in the same process wastewater treatment system, the reasonable measure of production (daily operating rate) shall be determined for each production facility or combination of similar, multiple production facilities separately (not necessarily during the same time period) and summed. The reasonable measure of production for each set of similar, multiple production facilities shall be established using the protocols in § 420.3(a)(2).

(b) all process operations regulated by subparts A through G of this part, mass effluent limitations and pretreatment requirements for each process operation shall be computed by multiplying the reasonable measure of actual production by the respective effluent limitations guidelines or standards. The mass effluent limitations or pretreatment requirements applicable at a given NPDES or pretreatment compliance monitoring point shall be the sum of the mass effluent limitations or pretreatment requirements for each process operation with process wastewaters discharging to that compliance monitoring point.

(c) Mass NPDES permit effluent limitations or pretreatment requirements derived from this part shall remain in effect for the term of the NPDES permit or pretreatment control mechanism, except:

(1) When the permit is modified in accordance with § 122.62 of this chapter or local POTW permit modification provisions; or

(2) Where alternate effluent limitations are established for increased or decreased production levels in accordance with § 122.45(b)(2)(ii)(A)(*1*) of this chapter.

(d) Permit and pretreatment control authorities may provide for increased loadings for non-process wastewaters defined at § 420.2 and for storm water from the immediate process area in NPDES permits and pretreatment control mechanisms using best professional judgment, but only to the extent such non-process wastewaters result in an increased flow.

§ 420.4 Alternative effluent limitations under the "water bubble".

(a) Except as provided in paragraphs (d) through (g) of this section, any existing and new source direct discharging point source subject to this part may qualify for alternative effluent limitations to those specified in subparts A through G of this part, representing the degree of effluent reduction attainable by the application of best practicable control technology currently available, best available technology economically achievable, best conventional technology, and best demonstrated technology. The alternative effluent limitations for each pollutant are determined for a combination of outfalls by totaling the mass limitations allowed under subparts A through G of this part for each pollutant and subtracting from each total the net reduction amount specified for that pollutant in paragraph (b) of this section. The permit authority shall determine a net reduction amount for each pollutant subject to this section that is greater than the minimum percentage specified in paragraph (b) of this section upon consideration of additional available control measures that would result in effluent reductions and which can be achieved without requiring significant additional expenditures at any outfall(s) in the combination for which the discharge is projected to be better than required by this regulation.

(b) The water bubble may be used to calculate alternative effluent limitations only for identical pollutants (*e.g.* lead for lead, not lead for zinc).

(c) In the case of Total Suspended Solids (TSS), the minimum net reduction amount shall be at least 15 percent of the amount(s) for existing sources and 20 percent of the amount(s) for new sources by which the TSS discharges from any waste stream(s) in

the combination will meet otherwise allowable effluent limitations for TSS. all other pollutants, the minimum net reduction amount shall be at least 10 percent of the amount(s) for existing sources and 20 percent of the amount(s) for new sources by which the discharges from any waste stream(s) in the combination will meet otherwise allowable effluent limitations for each pollutant under this regulation.

(d) Use of the water bubble to develop alternate effluent limitations for oil & grease is prohibited.

(e) A discharger cannot qualify for alternative effluent limitations if the application of such alternative effluent limitations would cause or contribute to an exceedance of any applicable water quality standards.

(f) Each outfall or internal NPDES permit compliance point from which process wastewaters are discharged must have specific, fixed effluent limitations for each pollutant limited by the applicable subparts A through G of this part.

(g) Subcategory-Specific Restrictions:

(1) There shall be no alternate effluent limitations for cokemaking process wastewater unless the alternative limitations are more stringent than the limitations in subpart A of this part;

(2) There shall be no alternate effluent limitations for sintering process wastewater unless the alternative limitations are more stringent than the sintering process wastewater limitations in subpart B of this part.

(h) The water bubble may be used to calculate alternative effluent limitations only for identical pollutants (*e.g.*, lead for lead, not lead for zinc).

§ 420.5 Pretreatment standards compliance dates.

Compliance with the pretreatment standards for existing sources set forth in this part is required not later than three years from date of publication of the final rule whether or not the pretreatment authority issues or amends a pretreatment permit requiring such compliance. Until that date, the pretreatment standards for existing sources set forth in the 2000 version of this part shall continue to apply.

§ 420.6 Effluent limitations guidelines and standards for pH.

(a) The pH level shall be maintained between 6.0 and 9.0 su at all times.

(b) The pH level in process wastewaters subject to a subpart within this part shall be monitored at the point of discharge to the receiving water or at the point at which the wastewater leaves the wastewater treatment facility operated to treated effluent subject to that subpart.

§ 420.7 Supplemental NPDES permit application and pretreatment report requirements.

In addition to the information and data for NPDES permit applications and pretreatment reports required by part 122, subpart B and § 403.12, respectively, the permit applicant shall provide the following information with its permit application or pretreatment report:

(a) Complete applications for any new variances or for renewal of any existing variances from the generally applicable effluent limitations;

(b) Any proposed alternative effluent limitations under the "water bubble" rule at § 420.4.

Subpart A—Cokemaking Subcategory

§ 420.10 Applicability.

The provisions of this subpart are applicable to discharges and the introduction of pollutants into publicly owned treatment works resulting from by-product and other cokemaking operations.

§ 420.11 Subcategory definitions.

As used in this subpart:

(a) *Product* means the average daily operating (production) rate of metallurgical coke plus coke breeze determined in accordance with § 420.3.

(b) *By-product cokemaking* means operations in which coal is heated in the absence of air to produce metallurgical coke (furnace coke and foundry coke) and recovery of by-products derived from the gases and liquids which are driven from the coal during cokemaking.

(c) *Cokemaking, non-recovery* means cokemaking operations for production of metallurgical coke (furnace coke and foundry coke) without recovery of by-products.

(d) *Coke* means a processed form of coal which serves as the basic fuel for the smelting of iron ore.

(1) *Foundry coke* means coke produced for foundry operations.

(2) *Furnace coke* means coke produced for blast furnace operations.

(e) *Iron and steel coke plant* means by-product cokemaking operations which provide more than fifty per cent of the coke produced to ironmaking blast furnaces associated with steel production.

(f) *Merchant coke plant* means by-product cokemaking operations other than those at iron and steel coke plants.

(g) *Merchant bar* means rounds, flats, angles, squares and channels that are used by fabricators to manufacture a wide variety of products such as furniture, stair railings and farm equipment.

(h) *Wet desulfurization system* means one that utilizes water to remove (scrub) sulfur compounds from coke oven off-gases.

(i) *NESHAPs* means National Emission Standards for Hazardous Air Pollutants applicable to by-product coke plants.

§ 420.12 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

(a) *By-product cokemaking.* Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this segment must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

Effluent Limitations (BPT)

Process wastewater source	Maximum daily [3]	Maximum monthly avg.[3]
(1) Iron and steel coke plants [1]		
Oil & grease	0.0654	0.0218
TSS	0.506	0.262
(2) Merchant coke plants [2]		
Oil & grease	0.0698	0.0232
TSS	0.540	0.280

[1] iron and steel coke plants, increased loadings, not to exceed 11 per cent of the above limitations, shall be provided for process wastewaters from wet desulfurization systems, but only to the extent such systems generate process wastewaters.

[2] merchant coke plants, increased loadings, not to exceed 10 per cent of the above limitations, shall be provided for process wastewaters from wet desulfurization systems, but only to the extent such systems generate process wastewaters. [3] Pounds per ton of product.

(b) *Cokemaking—non-recovery.* Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this segment must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to waters of the U.S.

§ 420.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best control technology for conventional pollutants (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best control technology for conventional pollutants (BCT): The limitations shall be the same as those specified for conventional pollutants (which are defined in 40 CFR 401.16) in § 420.12 for the best practicable control technology currently available (BPT).

§ 420.14 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available control technology economically achievable (BAT).

(a) *By-product cokemaking.* Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available control technology economically achievable (BAT):

EFFLUENT LIMITATIONS (BAT)

Regulated parameter	Maximum daily[1]	Maximum monthly avg.[1]
Ammonia (as N)	0.00137	0.000618
Benzo(a)pyrene	0.0000909	0.0000304
Cyanide	0.0104	0.00394
Mercury	0.000000864	0.000000523
Naphthalene	0.000103	0.0000345
Phenol	0.0000332	0.0000187
Selenium	0.000185	0.000159
Thiocyanate	0.00164	0.00115
TRC	0.000659	

[1]Pounds per ton of product.

(1) Increased loadings, not to exceed 9.5 per cent of the above limitations, shall be provided for process wastewaters from wet desulfurization systems, but only to the extent such systems generate process wastewaters.

(2) Increased loadings, not to exceed 6.3 per cent of the above limitations, shall be provided for process wastewaters generated as a result of control measures necessary for compliance with by-product coke plant NESHAPs, but only to the extent such systems generate process wastewaters.

(3) Increased loadings shall be provided for process wastewaters from other wet air pollution control systems (except those from coal charging and coke pushing emission controls), coal tar processing operations and coke plant groundwater remediation systems, but only to the extent such systems generate process wastewaters and those wastewaters are co-treated with process wastewaters from by-product cokemaking wastewaters.

(4) The effluent limitations for TRC shall be applicable only when chlorination of cokemaking wastewaters is practiced.

(b) *Cokemaking—non-recovery.* Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available control technology economically achievable (BAT): There shall be no discharge of process wastewater pollutants to waters of the U.S.

§ 420.15 New source performance standards (NSPS).

New sources subject to this subpart must achieve the following new source performance standards (NSPS), as applicable.

(a) Any new source subject to the provisions of this section that commenced discharging after [insert date 10 years prior to the date that is 60 days after the publication date of the final rule] and before [insert date that is 60 days after the publication date of the final rule] must continue to achieve the standards specified in the 2000 version of § 420.14. toxic and nonconventional pollutants, those standards shall not apply after the expiration of the applicable time period specified in 40 CFR 122.29(d)(1); thereafter, the source must achieve the standards specified in § 420.14.

(b) *By-product cokemaking.* The following standards apply with respect to each new source that commences construction after [insert date that is 60 days after the publication date of the final rule:

EFFLUENT LIMITATIONS (BAT)

Regulated parameter	Maximum daily[1]	Maximum monthly avg.[1]
Ammonia (as N)	0.00137	0.000618
Benzo(a)pyrene	0.0000909	0.0000304
Cyanide	0.0104	0.00394
Mercury	0.000000864	0.000000523
Naphthalene	0.000103	0.0000345
Oil & grease	0.0246	0.0132

EFFLUENT LIMITATIONS (BAT)—Continued

Regulated parameter	Maximum daily[1]	Maximum monthly avg.[1]
Phenol	0.0000332	0.0000187
Selenium	0.000185	0.000159
Thiocyanate	0.00164	0.00115
TRC	0.000659	
TSS	0.0665	0.0337

[1]Pounds per ton of product.

(1) Increased loadings, not to exceed 9.5 per cent of the above limitations, shall be provided for process wastewaters from wet desulfurization systems, but only to the extent such systems generate process wastewaters.

(2) Increased loadings, not to exceed 6.3 per cent of the above limitations, shall be provided for process wastewaters generated as a result of control measures necessary for compliance with by-product coke plant NESHAPs, but only to the extent such systems generate process wastewaters.

(3) Increased loadings shall be provided for process wastewaters from other wet air pollution control systems (except those from coal charging and coke pushing emission controls), coal tar processing operations and coke plant groundwater remediation systems, but only to the extent such systems generate process wastewaters and those wastewaters are co-treated with process wastewaters from by-product cokemaking wastewaters.

(4) The effluent limitations for TRC shall be applicable only when chlorination of cokemaking wastewaters is practiced.

(c) *Cokemaking—non-recovery.* There shall be no discharge of process wasterwater pollutants to waters of the U.S.

§ 420.16 Pretreatment standards for existing sources (PSES).

Option 1 for paragraph (a): (a) *By-product cokemaking.* Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart must achieve the following pretreatment standards for existing sources (PSES):

PHYSICAL CHEMICAL TREATMENT

[Pretreatment Standards (PSES)]

Regulated parameter	Maximum daily[1]	Maximum monthly avg.[1]
Ammonia (as N)	0.0845	0.0559
Cyanide	0.0244	0.0128
Naphthalene	0.00268	0.000869
Phenol	2.13	0.720
Selenium	0.00125	0.00104
Thiocyanate	0.402	0.317

[1] Pounds per ton of product.

(1) Increased loadings, not to exceed 13.9 per cent of the above limitations, shall be provided for process wastewaters from wet desulfurization systems, but only to the extent such systems generate process wastewaters.

(2) Increased loadings, not to exceed 9.3 per cent of the above limitations, shall be provided for process wastewaters generated as a result of control measures necessary for compliance with by-product coke plant NESHAPs, but only to the extent such systems generate process wastewaters.

(3) Increased loadings shall be provided for process wastwaters from other wet air pollution control systems (except those from coal charging and coke pushing emission controls), coal tar processing operations and coke plant groundwater remediation systems, but only to the extent such systems generate process wastewaters and those wastewaters are co-treated with process wastewaters from by-product cokemaking wastewaters.

Option 2 for paragraph (a): (a) *By-product cokemaking.* Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart must achieve the following pretreatment standards for existing sources (PSES):

PHYSICAL CHEMICAL PLUS BIOLOGICAL TREATMENT

[Pretreatment Standards (PSES)]

Regulated parameter	Maximum daily[1]	Maximum monthly avg.[1]
Ammonia (as N)	0.00539	0.00357
Cyanide	0.00616	0.00422
Naphthalene	0.000103	0.0000345
Phenol	0.0000332	0.0000187
Selenium	0.000185	0.000159
Thiocyanate	0.00164	0.00115

[1] Pounds per ton of product.

(1) Increased loadings, not to exceed 9.5 percent of the above limitations, shall be provided for process wastewaters from wet desulfurization systems, but only to the extent such systems generate process wastewaters.

(2) Increased loadings, not to exceed 6.3 percent of the above limitations, shall be provided for process wastewaters generated as a result of control measures necessary for compliance with by-product coke plant NESHAPs, but only to the extent such systems generate process wastewaters.

(3) Increased loadings shall be provided for process wastewaters from other wet air pollution control systems (except those from coal charging and coke pushing emission controls), coal tar processing operations and coke plant groundwater remediation systems, but only to the extent such systems generate process wastewaters and those wastewaters are co-treated with process wastewaters from by-product cokemaking wastewaters.

(b) *Cokemaking-non-recovery.* There shall be no discharge of process wastewater pollutants to POTWs.

§ 420.17 Pretreatment standards for new sources (PSNS).

New sources subject to this subpart must achieve the following pretreatment standards for new sources (PSNS), as applicable.

(a) Any new source subject to the provisions of this section that commenced discharging after [insert date that is 10 years prior to the date that is 60 days after the publication date of the final rule] and before [insert date that is 60 days after the publication date of the final rule] must continue to achieve the standards specified in the 2000 version of § 420.16 for ten years beginning on the date the source commenced discharge or during the period of depreciation or amortization of the facility, whichever comes first, after which the source must achieve the standards specified in § 420.16.

(b) *By-product cokemaking.* Except as provided in 40 CFR 403.7, the following standards apply with respect to each new source that commences discharge after [insert date that is 60 days after the publication date of the final rule]:

PHYSICAL CHEMICAL PLUS BIOLOGICAL TREATMENT

[Pretreatment Standards (PSNS)]

Regulated parameter	Maximum daily [1]	Maximum monthly avg.[1]
Ammonia (as N)	0.00539	0.00357
Cyanide	0.00616	0.00422
Naphthalene	0.000103	0.0000345
Phenol	0.0000332	0.0000187
Selenium	0.000185	0.000159
Thiocyanate	0.00164	0.00115

[1] Pounds per ton of product.

(1) Increased loadings, not to exceed 9.5 percent of the above limitations, shall be provided for process wastewaters from wet desulfurization systems, but only to the extent such systems generate process wastewaters.

(2) Increased loadings, not to exceed 6.3 percent of the above limitations, shall be provided for process wastewaters generated as a result of control measures necessary for compliance with by-product coke plant NESHAPs, but only to the extent such systems generate process wastewaters.

(3) Increased loadings shall be provided for process wastewaters from other wet air pollution control systems (except those from coal charging and coke pushing emission controls), coal tar processing operations and coke plant groundwater remediation systems, but only to the extent such systems generate process wastewaters and those wastewaters are co-treated with process wastewaters from by-product cokemaking wastewaters.

(c) *Cokemaking—non-recovery.* There shall be no discharge of process wastewater pollutants to POTWs.

Subpart B—Ironmaking Subcategory

§ 420.20 Applicability.

The provisions of this subpart are applicable to discharges and the introduction of pollutants into publicly owned treatment works resulting from: Sintering operations conducted by heating in a traveling grate combustion system of iron bearing materials (*e.g.*, iron ore, mill scale, blast furnace flue dusts, blast furnace wastewater treatment sludges), limestone, coke fines and other materials to produce an agglomerate for charging to the blast furnace; and, ironmaking operations in which iron ore and other iron-bearing materials are reduced to molten iron in a blast furnace.

§ 420.21 Subcategory definitions.

As used in this subpart:

(a) *Product* means:

(1) Sinter agglomerated from iron-bearing materials; or

(2) Molten iron produced in a blast furnace, and does not include slag skimmed remotely from the blast furnace.

The average daily operating (production) rate of sinter and molten iron must be determined in accordance with § 420.3.

(b) *Dry-air pollution control system* is an emission control system that utilizes filters to remove iron-bearing particles (fines) from blast furnace or sintering off-gases.

(c) *Minimum level (ML)* means the level at which the analytical system gives recognizable signals and an acceptable calibration point. 2,3,7,8-tetrachlorodibenzofuran, the minimum level is 10 pg/L per EPA Method 1613B for water and wastewater samples.

(d) *Pg/L* means picograms per liter (ppt = 1.0×10^{-12} gm/L).

(e) *Sintering* means a process for agglomerating iron-bearing materials into small pellets (sinter) which can be charged to a blast furnace.

(f) *Wet-air pollution control system* is an emission control system that utilizes a water mist to clean process or furnace off-gases.

§ 420.22 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve, for each applicable operation, the following effluent limitations representing the degree of effluent reduction attainable by the application

of the best practicable control technology currently available (BPT):

EFFLUENT LIMITATIONS (BPT)

Process wastewater source	Maximum daily [1]	Maximum monthly avg [1]
(a) Sintering operations with wet air pollution controls:		
Oil & grease	0.0300	0.0100
TSS	0.150	0.050
(b) Blast furnaces:		
Oil & grease		
TSS	0.156	0.0520
(c) Sintering operations with dry air pollution controls	[2]	[2]

[1] Pounds per ton of product.
[2] There shall be no discharge of process wastewater pollutants to waters of the U.S. for sintering operations with dry air pollution controls.

§ 420.23 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best control technology for conventional pollutants (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best control technology for conventional pollutants (BCT): The limitations shall be the same as those specified for conventional pollutants (which are defined in 40 CFR 401.16) in § 420.22 of this subpart for the best practicable control technology currently available (BPT).

§ 420.24 Effluent limitations attainable by the application of the best available control technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available control technology economically achievable (BAT).

(a) *Sintering operations with wet air pollution control system.* The following table is effluent limitations (BAT) for sintering operations with wet air pollution control system:

EFFLUENT LIMITATIONS (BAT)

Regulated parameter	Maximum daily [1]	Maximum monthly avg. [1]
Ammonia (as N)	0.000652	0.000293
Cyanide	0.00493	0.00187
Lead	0.0000913	0.0000476
Phenol	0.0000463	0.0000157
2,3,7,8–TCDF	[3]<ML	
TRC [2]	0.000313	
Zinc	0.000116	0.0000457

[1] Pounds per ton of product.
[2] Applicable only when sintering process wastewater is chlorinated.
[3] Ten parts per quadrillion (10×10^{-12} g/l).

(b) *Sintering operations with dry air pollution control system.* There shall be no discharge of process wastewater pollutants to waters of the U.S.

(c) *Blast furnaces.* The following table is effluent limitations (BAT) for blast furnaces:

EFFLUENT LIMITATIONS (BAT)

Regulated parameter	Maximum daily [1]	Maximum monthly avg. [1]
Ammonia (as N)	0.000217	0.0000977
Cyanide	0.00164	0.000623
Lead	0.0000304	0.0000159
Phenol	0.0000154	0.00000523
2,3,7,8-TCDF [3]	[4]<ML	
TRC [2]	0.000104	
Zinc	0.0000387	0.0000152

[1] Pounds per ton of product.
[2] Applicable only when blast furnace process wastewater is chlorinated.
[3] Applicable only when process wastewaters from blast furnaces and sintering operations are co-treated.
[4] Ten parts per quadrillion (10×10^{-12} g/l).

§ 420.25 New Source Performance Standards (NSPS).

New sources subject to this subpart must achieve the following new source performance standards (NSPS), as applicable.

(a) Any new source subject to the provisions of this section that commenced discharging after *[insert date 10 years prior to the date that is 60 days after the publication date of the final rule]* and before *[insert date that is 60 days after the publication date of the final rule]* must continue to achieve the applicable standards specified in the 2000 version of §§ 420.24 and 420.34. toxic and nonconventional pollutants, those standards shall not apply after the expiration of the applicable time period specified in 40 CFR 122.29(d)(1); thereafter, the source must achieve the applicable standards specified in § 420.24.

(b) The following standards apply with respect to each new source that commences construction after *[insert date that is 60 days after the publication date of the final rule]*.

(1) *Sintering operations with wet air pollution control system.* The following table is Performance Standards (NSPS) for sintering operations with wet air pollution control system:

PERFORMANCE STANDARDS (NSPS)

Regulated parameter	Maximum daily [1]	Maximum monthly avg.[1]
Ammonia (as N)	0.000652	0.000293
Cyanide	0.00493	0.00187
Lead	0.0000913	0.0000476
Oil & grease	0.00531	0.00420
Phenol	0.0000463	0.0000157
2,3,7,8-TCDF	[3] <ML	
TRC [2]	0.000313	
TSS	0.0251	0.00939
Zinc	0.000116	0.0000457

[1] Pounds per ton of product.
[2] Applicable only when sintering process wastewater is chlorinated.
[3] Ten parts per quadrillion (10×10^{-2} g/l).

(2) *Sintering operations with dry air pollution control system.* There shall be no discharge of process wastewater pollutants to waters of the U.S.

(3) *Blast furnaces.* The following table is Performance Standards (NSPS) for blast furnaces:

PERFORMANCE STANDARDS (NSPS)

Regulated parameter	Maximum daily [1]	Maximum monthly avg.[1]
Ammonia (as N)	0.000217	0.0000977
Cyanide	0.00164	0.000623
Lead	0.0000304	0.0000159
Oil & grease	0.00177	0.00140
Phenol	0.0000154	0.00000523
2,3,7,8-TCDF[3]	[4] <ML	
TRC [2]	0.000104	
TSS	0.00836	0.00313
Zinc	0.0000387	0.0000152

[1] Pounds per ton of product.
[2] Applicable only when blast furnace process wastewater is chlorinated.
[3] Applicable only when process wastewaters from blast furnaces and sintering operations are co-treated.
[4] Ten parts per quadrillion (10×10^{-12} g/l).

§ 420.26 Pretreatment Standards for Existing Sources (PSES).

Except as provided in 40 CFR 403.7, any existing source subject to this subpart must achieve the following pretreatment standards for existing sources (PSES):

(a) *Sintering operations with wet air pollution control system.* The following table is Pretreatment Standards (PSES) for sintering operations with wet air pollution control system:

PRETREATMENT STANDARDS (PSES)

Regulated parameter	Maximum daily [1]	Maximum monthly avg.[1]
Ammonia (as N) [2]	0.000652	0.000293
Lead	0.0000913	0.0000476
2,3,7,8-TCDF	[3] <ML	
Zinc	0.000116	0.0000457

[1] Pounds per ton of product.

[2] Not applicable when the facilities discharge to POTWs with the capability, when considered together with the indirect discharger's removals, to achieve removals at least equivalent to those expected under BAT.
[3] Ten parts per quadrillion (10 x 10^{-12} g/l).

(b) *Sintering operations with dry air pollution control system.* There shall be no discharge of process wastewater pollutants to POTWs.

(c) *Blast furnaces.* The following table is Pretreatment Standards (PSES) for blast furnaces:

PRETREATMENT STANDARDS (PSES)

Regulated parameter	Maximum daily [1]	Maximum monthly avg.[1]
Ammonia (as N) [2]	0.000217	0.0000977
Lead	0.0000304	0.0000159
2,3,7,8–TCDF [3]	[4] <ML	
Zinc	0.0000387	0.0000152

[1] Pounds per ton of product.
[2] Not applicable when the facilities discharge to POTWs with the capability, when considered together with the indirect discharger's removals, to achieve removals at least equivalent to those expected under BAT.
[3] Applicable only when process wastewater from blast furnaces and sintering operations are co-treated.
[4] Ten parts per quadrillion (10 x 10^{-12} g/l).

§ 420.27 Pretreatment standards for new sources (PSNS).

New sources subject to this subpart must achieve the following pretreatment standards for new sources (PSNS), as applicable.

(a) Any new source subject to the provisions of this section that commenced discharging after *[insert date 10 years prior to the date that is 60 days after the publication date of the final rule]* and before *[insert date that is 60 days after the publication date of the final rule]* must continue to achieve the standards specified in the 2000 version of § 420.26 for ten years beginning on the date the source commenced discharge or during the period of depreciation or amortization of the facility, whichever comes first, after which the source must achieve the standards specified in § 420.26.

(b) Except as provided in 40 CFR 403.7, the following standards apply with respect to each new source that commences construction after *[insert date that is 60 days after the publication date of the final rule]*:

(1) *sintering operations with wet air pollution control system.* The following table is Pretreatment Standards (PSNS) for sintering operations with wet air pollution control system:

PRETREATMENT STANDARDS (PSNS)

Regulated parameter	Maximum daily [1]	Maximum monthly avg.[1]
Ammonia (as N) [2]	0.000652	0.000293
Lead	0.0000913	0.0000476
2,3,7,8-TCDF	[3] <ML	
Zinc	0.000116	0.0000457

[1] Pounds per ton of product.
[2] Not applicable when the facilities discharge to POTWs with the capability, when considered together with the indirect discharger's removals, to achieve removals at least equivalent to those expected under BAT.
[3] Ten parts per quadrillion (10 x 10^{-12} g/l).

(2) *Sintering operations with dry air pollution control system.* There shall be no discharge of process wastewater pollutants to POTWs.

(3) *Blast furnaces:* The following table is Pretreatment Standards (PSNS) for blast furnaces:

PRETREATMENT STANDARDS (PSNS)

Regulated parameter	Maximum daily [1]	Maximum monthly avg.[1]
Ammonia (as N) [2]	0.000217	0.0000977
Lead	0.0000304	0.0000159
2,3,7,8-TCDF [3]	[4] <ML	
Zinc	0.0000387	0.0000152

[1] Pounds per ton of product.
[2] Not applicable when the facilities discharge to POTWs with the capability, when considered together with the indirect discharger's removals, to achieve removals at least equivalent to those expected under BAT.
[3] Applicable only when process wastewater from blast furnaces and sintering operations are co-treated.
[4] Ten parts per quadrillion (10 x 10^{-12} g/l).

§ 420.28 Point of compliance monitoring.

(a) *Sinter Direct Dischargers.* Pursuant to 40 CFR 122.44(i) and 122.45(h), a direct discharger must demonstrate compliance with the effluent limitations and standards for 2,3,7,8-TCDF at the point after treatment of sinter plant wastewater separately or in combination with blast furnace wastewater, but prior to mixing with any other process or non-process wastewaters or non-contact cooling waters.

(b) *Sinter Indirect Dischargers.* An indirect discharger must demonstrate compliance with the pretreatment standards for 2,3,7,8=TCDF by monitoring at the point after treatment of sinter plant wastewater separately or in combination with blast furnace wastewater, but prior to mixing with any other process or non-process wastewaters or non-contact cooling waters.

Subpart C—Integrated Steelmaking Subcategory

§ 420.30 Applicability.

The provisions of this subpart are applicable to discharges and the introduction of pollutants into publicly owned treatment works resulting from steelmaking operations conducted at integrated steel mills. Such operations include steelmaking in basic oxygen furnaces and vacuum degassing and continuous casting of molten steels. The provisions of this subpart are also applicable to steelmaking in basic oxygen furnaces conducted at any location.

§ 420.31 Subcategory definitions.

As used in this subpart:

(a) *Product* means steel produced in a basic oxygen furnace (BOF) from molten iron, steel scrap, fluxes and alloying elements in various combinations by adding oxygen (air), before further processing in ladle metallurgy stations or casting operations. The average daily operating (production) rates shall be determined in accordance with § 420.3, except as noted in paragraph (b) of this section.

(b) *Average hourly operating rate and average daily operating rate* for vacuum degassing operations must be determined in accordance with the methods set out in § 420.3 for the week with the highest vacuum degassing production during the year with the highest annual production from the past five years.

(c) *Basic furnace* means one in which the brick lining is composed of refractory material derived from dolomite (CaO and MgO), limestone (CaO), or magnesite (MgO).

(d) *Semi-wet-air* means an emission control system in which water is added for the purpose of conditioning the temperature and/or the humidity of furnace or process off-gases prior to cleaning the gases in a dry-air emission control system.

(e) *Wet-air open combustion* means an emission control system which has been designed to add excess air to furnace or process off-gases so as to assure a more complete combustion (conversion) of carbon monoxide to carbon dioxide.

(f) *Wet-air suppressed combustion* means an emission control system which has been designed to restrict the amount of air available to furnace or process off-gases so as to assure minimal combustion (conversion) of carbon monoxide to carbon dioxide.

§ 420.32 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve, for each applicable operation, the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

EFFLUENT LIMITATIONS (BPT)

Process wastewater source	Maximum daily [1]	Maximum monthly Avg. [1]
(a) Basic oxygen furnaces:		
(1) semi-wet air pollution controls:	([3])	
Oil & grease		
TSS		
(2) wet-open combustion:		
Oil & grease		
TSS	0.137	0.0458
(3) wet-suppressed combustion:		
Oil & grease		
TSS	0.0624	0.0208
(b) Vacuum degassing:		
Oil & grease		
TSS	0.0312	0.0104
(c) Continuous casting:		
Oil & grease	0.0468	0.0156
TSS	0.156	0.052
(d) Ladle metallurgy	([2])	([2])

[1] Pounds per ton of product.
[2] There shall be no discharge of process wastewater pollutants to waters of the U.S. for ladle metallurgy.
[3] 1982 regulation allowed for no discharge of process wastewater from this operation.

§ 420.33 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best control technology for conventional pollutants (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best control technology for conventional pollutants (BCT): The limitations shall be the same as those specified for conventional pollutants (which are defined in 40 CFR 401.16) in § 420.32 for the best practicable control technology currently available (BPT).

§ 420.34 Effluent limitations attainable by the application of the best available control technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point

source subject to this subpart must achieve, for each applicable operation, the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available control technology economically achievable (BAT):

(a) *Basic oxygen furnaces with semi-wet air pollution control system; basic oxygen furnaces with wet-suppressed combustion air pollution control system; vacuum degassing; continuous casting.* This table is Effluent Limitations (BAT) for basic oxygen furnaces with semi-wet air pollution control system; basic oxygen furnaces with wet-suppressed combustion air pollution control system; vacuum degassing; and continuous casting:

EFFLUENT LIMITATIONS (BAT)

Process wastewater source	Maximum daily [1]	Maximum monthly avg. [1]
(1) Basic oxygen furnaces:		
(i) semi-wet air pollution controls:		
(A) Lead	0.0000122	0.00000634
(B) Zinc	0.0000140	0.00000795
(ii) wet-suppressed combustion:		
(A) Lead	0.0000243	0.0000127
(B) Zinc	0.0000279	0.0000159
(2) Vacuum degassing:		
(i) Lead	0.0000183	0.00000951
(ii) Zinc	0.0000209	0.0000119
(3) Continuous casting:		
(i) Lead	0.0000243	0.0000127
(ii) Zinc	0.0000279	0.0000159

[1] Pounds per ton of product.

(b) *Basic oxygen furnaces with wet-open combustion air pollution control system.* The following table is Effluent Limitations (BAT) for basic oxygen furnaces with wet-open combustion air pollution control system:

EFFLUENT LIMITATIONS (BAT)

	Maximum daily [1]	Maximum monthly avg. [1]
Lead	0.0000243	0.0000127
Zinc	0.0000279	0.0000159

[1] Pounds per ton of product.

(c) *Ladle Metallurgy.* There shall be no discharge of process wastewater pollutants to waters of the U.S.

§ 420.35 New Source Performance Standards (NSPS).

New sources subject to this subpart must achieve the following new source performance standards (NSPS), as applicable.

(a) Any new source subject to the provisions of this section that commenced discharging after *[insert date 10 years prior to the date that is 60 days after the publication date of the final rule]* and before *[insert date that is 60 days after the publication date of the final rule]* must continue to achieve the applicable standards specified in the 2000 version of §§ 420.44, 420.54 and 420.64. toxic and nonconventional pollutants, those standards shall not apply after the expiration of the applicable time period specified in 40 CFR 122.29(d)(1); thereafter, the source must achieve the applicable standards specified in § 420.34.

(b) The following standards apply with respect to each new source that commences construction after *[insert date that is 60 days after the publication date of the final rule].*

(1) *Basic oxygen furnaces with semi-wet air pollution control system; basic oxygen furnaces with wet-suppressed combustion air pollution control system; vacuum degassing; continuous casting.* The following table is Performance Standards (NSPS) for basic oxygen furnaces with semi-wet air pollution control system; basic oxygen furnaces with wet-suppressed combustion air pollution control system; vacuum degassing; and continuous casting:

PERFORMANCE STANDARDS (NSPS)

Process wastewater source	Maximum daily [1]	Maximum monthly avg. [1]
(i) Basic oxygen furnaces:		
(A) semi-wet air pollution controls:		
(*1*) Lead	0.0000122	0.00000634
(*2*) Zinc	0.0000140	0.00000795
(ii) wet-suppressed combustion:		
(A) Lead	0.0000243	0.0000127
(B) Zinc	0.0000279	0.0000159
(ii) Vacuum degassing		
(A) Lead	0.0000183	0.00000951

PERFORMANCE STANDARDS (NSPS)—Continued

Process wastewater source	Maximum daily [1]	Maximum monthly avg.[1]
(B) Zinc	0.0000209	0.0000119
(iii) Continuous casting		
(A) Lead	0.0000243	0.0000127
(B) Zinc	0.0000279	0.0000159

[1] Pounds per ton of product.

(2) *Basic oxygen furnaces with wet-open combustion air pollution control system.* The following table is Performance Standards (NSPS) for basic oxygen furnaces with wet-open combustion air pollution control system:

PERFORMANCE STANDARDS (NSPS)

	Maximum daily [1]	Maximum monthly avg.[1]
Lead	0.0000243	0.0000127
Zinc	0.0000279	0.0000159

[1] Pounds per ton of product.

(3) *Ladle Metallurgy.* There shall be no discharge of process wastewater pollutants to waters of the U.S.

§ 420.36 Pretreatment Standards for Existing Sources (PSES).

Except as provided in 40 CFR 403.7, any existing source subject to this subpart must achieve the following pretreatment standards for existing sources (PSES):

(a) *Basic oxygen furnaces with semi-wet air pollution control system; basic oxygen furnaces with wet-suppressed combustion air pollution control system; vacuum degassing; continuous casting.* The following table is Pretreatment Standards (PSES) for basic oxygen furnaces with semi-wet air pollution control system; basic oxygen furnaces with wet-suppressed combustion air pollution control system; vacuum degassing; and continuous casting:

PRETREATMENT STANDARDS (PSES)

Process Wastewater Source	Maximum daily [1]	Maximum monthly avg.[1]
(1) Basic oxygen furnaces:		
(i) semi-wet air pollution controls		
(A) Lead	0.0000122	0.00000634
(B) Zinc	0.0000140	0.00000795
(ii) wet-suppressed combustion		
(A) Lead	0.0000243	0.0000127
(B) Zinc	0.0000279	0.0000159
(2) Vacuum degassing:		
(i) Lead	0.0000183	0.00000951
(ii) Zinc	0.0000209	0.0000119
(3) Continuous casting:		
(i) Lead	0.0000243	0.0000127
(ii) Zinc	0.0000279	0.0000159

[1] Pounds per ton of product.

(b) *Basic oxygen furnaces with wet-open combustion air pollution control system.* The following table is Pretreatment Standards (PSES) for basic oxygen furnaces with wet-open combustion air pollution control system:

PRETREATMENT STANDARDS (PSES)

	Maximum daily [1]	Maximum monthly avg.[1]
Lead	0.0000243	0.0000127
Zinc	0.0000279	0.0000159

[1] Pounds per ton of product.

(c) *Ladle Metallurgy.* There shall be no discharge of process wastewater pollutants to POTWs.

§ 420.37 Pretreatment Standards for New Sources (PSNS).

New sources subject to this subpart must achieve the following pretreatment standards for new sources (PSNS), as applicable.

(a) Any new source subject to the provisions of this section that commenced discharging after *[insert date 10 years prior to the date that is 60 days after the publication date of the final rule]* and before *[insert date that is 60 days after the publication date of the final rule]* must continue to achieve the standards specified in the 2000 version of §§ 420.46, 420.56, and 420.66 for ten years beginning on the date the source commenced discharge or during the period of depreciation or amortization of the facility, whichever comes first, after which the source must achieve the standards specified in § 420.36.

(b) Except as provided in 40 CFR 403.7, the following standards apply with respect to each new source that commences construction after *[insert date that is 60 days after the publication date of the final rule]*:

(1) *Basic oxygen furnaces with semi-wet air pollution control system; basic oxygen furnaces with wet-suppressed combustion air pollution control system; vacuum degassing; continuous casting.* The following table is Pretreatment Standards (PSNS) for basic oxygen furnaces with semi-wet air pollution control system; basic oxygen furnaces with wet-suppressed combustion air pollution control system; vacuum degassing; and continuous casting:

PRETREATMENT STANDARDS (PSNS)

Process wastewater source	Maximum daily [1]	Maximum monthly avg.[1]
(i) Basic oxygen furnaces:		
(A) semi-wet air pollution controls:		
(1) Lead	0.0000122	0.00000634
(2) Zinc	0.0000140	0.00000795
(B) wet-suppressed combustion:		
(1) Lead	0.0000243	0.0000127
(2) Zinc	0.0000279	0.0000159
(ii) Vacuum degassing:		
(A) Lead	0.0000183	0.00000951
(B) Zinc	0.0000209	0.0000119
(iii) Continuous casting:		
(A) Lead	0.0000243	0.0000127
(B) Zinc	0.0000279	0.0000159

[1] Pounds per ton of product.

(2) *Basic oxygen furnaces with wet-open combustion air pollution control system.* The following table is Pretreatment Standards (PSNS) basic oxygen furnaces with wet-open combustion air pollution control system:

PRETREATMENT STANDARDS (PSNS)

	Maximum daily [1]	Maximum monthly avg.[1]
Lead	0.0000243	0.0000127
Zinc	0.0000279	0.0000159

[1] Pounds per ton of product.

(3) *Ladle Metallurgy.* There shall be no discharge of process wastewater pollutants to POTWs.

Subpart D—Integrated and Stand-Alone Hot ming Subcategory

§ 420.40 Applicability.

The provisions of this subpart are applicable to discharges and the introduction of pollutants into publicly owned treatment works resulting from primary, section, flat and pipe and tube hot forming operations conducted at integrated steel mills and at stand-alone hot forming mills.

§ 420.41 Subcategory definitions.

As used in this subpart:

(a) *Product* means the solid, flat-rolled steel, steel shapes or pipe and tube produced at primary, section, flat, pipe and tube hot-forming mills. The average daily operating (production) rate shall be determined in accordance with § 420.3.

(b) *Hot forming* means those steel processing operations in which solidified, heated steel is shaped by mechanical pressure applied through one or a series of rolls.

(c) *Primary mill* means the first hot forming operation performed on solidified steel after the steel is removed from ingot molds in which steel ingots are reduced to blooms or slabs by passing the heated steel between rotating steel rolls.

(d) *Section mill* means those steel hot forming operations that produce a variety of steel shapes other than those produced on primary mills, flat mills or pipe and tube mills.

(e) *Flat mill* means those steel hot forming operations that reduce heated slabs to plates, strip and sheet or skelp.

(f) *Pipe and tube mill* means steel hot forming operations that produce butt-welded or seamless tubular steel products.

(g) *Scarfing* means steel surface conditioning operations in which flames generated by combustion of oxygen and fuel are used to remove surface metal imperfections from blooms, billets or slabs.

(h) *Plate mill* means steel hot forming operations that produce flat, hot-rolled

products that are: Between 8 and 48 inches wide and over 0.23 inches thick; or greater than 48 inches wide and over 0.18 inches thick.

(i) *Hot strip and sheet mill* means operations that produce flat, hot rolled steel products other than plates.

(j) *Carbon steel hot-forming* means operations that produce a majority (tonnage basis) of carbon steels by hot forming.

(k) *Specialty steel hot-forming* means operations that produce less than a majority (tonnage basis) of carbon steel by hot forming.

(l) *Carbon and alloy steel* means operations that produce a majority (tonnage basis) of carbon and alloy steel products by hot forming.

(m) *Stainless steels* means operations that produce a majority (tonnage basis) of stainless steel products by hot forming.

(n) *Skep* means flat, hot-rolled steel strip or sheet used to form welded pipe or tube products.

§ 420.42 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve, for each applicable operation, the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

EFFLUENT LIMITATIONS (BPT)

Process wastewater source	Maximum daily [1]	Maximum monthly Avg.[1]
(a) Primary mills, carbon and specialty:		
(1) without scarfing:		
(i) Oil & grease	0.0748	
(ii) TSS	0.300	0.112
(2) with scarfing:		
(i) Oil & grease:	0.442	
(ii) TSS	0.111	0.166
(b) Section mills:		
(1) carbon:		
(i) Oil & grease	0.179	
(ii) TSS	0.714	0.268
(2) Specialty:		
(i) Oil & grease	0.112	
(ii) TSS	0.448	0.128
(c) Flat mills:		
(1) Hot strip and sheet, carbon and specialty:		
(i) Oil & grease	0.214	
(ii) TSS	0.854	0.320
(2) Plate mills, carbon:		
(i) Oil & grease	0.114	
(ii) TSS	0.454	0.170
(3) Plate mills, specialty:		
(i) Oil & grease	0.0500	
(ii) TSS	0.200	0.0752
(d) Pipe and tube mills, carbon and specialty:		
(i) Oil & grease	0.106	
(2) TSS	0.424	0.159

[1] Pounds per ton of product.

§ 420.43 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best control technology for conventional pollutants (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best control technology for conventional pollutants (BCT): The limitations shall be the same as those specified for conventional pollutants (which are defined in 40 CFR 401.16) in § 420.42 of this subpart for the best practicable control technology currently available (BPT).

§ 420.44 Effluent limitations attainable by the application of the best available control technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available control technology economically achievable (BAT):

(a) *Carbon and Alloy Steels.* The following table is Effluent Limitations (BAT) for carbon and alloy steels:

EFFLUENT LIMITATIONS (BAT)

	Maximum daily [1]	Maximum monthly avg.[1]
Lead	0.000122	0.0000634
Zinc	0.000131	0.0000907

[1] Pounds per ton of product.

(b) *Stainless Steels.* The following table is Effluent Limitations (BAT) for stainless steels:

EFFLUENT LIMITATIONS (BAT)

	Maximum daily [1]	Maximum monthly avg.[1]
Chromium	0.0000808	0.0000362
Nickel	0.000275	0.000144

[1] Pounds per ton of product.

§ 420.45 New Source Performance Standards (NSPS).

New sources subject to this subpart must achieve the following new source performance standards (NSPS), as applicable.

(a) Any new source subject to the provisions of this section that commenced discharging after *[insert date 10 years prior to the date that is 60 days after the publication date of the final rule]* and before *[insert date that is 60 days after the publication date of the final rule]* must continue to achieve the applicable standards specified in the 2000 version of §§ 420.44, 420.54, 420.64, and 420.74. toxic and nonconventional pollutants, those standards shall not apply after the expiration of the applicable time period specified in 40 CFR 122.29(d)(1); thereafter, the source must achieve the applicable standards specified in § 420.44.

(b) The following standards apply with respect to each new source that commences construction after *[insert date that is 60 days after the publication date of the final rule].*

(1) *Carbon and Alloy Steels.* The following table is Performance Standards (NSPS) for carbon and alloy steels:

PERFORMANCE STANDARDS (NSPS)

	Maximum daily [1]	Maximum monthly avg.[1]
Lead	0.000122	0.0000634
Oil & grease	0.00793	0.00628
TSS	0.0182	0.0124
Zinc	0.000131	0.0000907

[1] Pounds per ton of product.

(2) *Stainless Steels.* The following table is Performance Standards (NSPS) for stainless steels:

PERFORMANCE STANDARDS (NSPS)

	Maximum daily [1]	Maximum monthly avg.[1]
Chromium	0.0000808	0.0000362
Nickel	0.000275	0.000144
Oil & grease	0.0236	0.0119
TSS	0.0265	0.0109

[1] Pounds per ton of product.

§ 420.46 Pretreatment Standards for Existing Sources (PSES).

Except as provided in 40 CFR 403.7, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

§ 420.47 Pretreatment Standards for New Sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

Subpart E—Non-Integrated Steelmaking and Hot ming Subcategory

§ 420.50 Applicability.

The provisions of this subpart are applicable to discharges and the introduction of pollutants into publicly owned treatment works resulting from steelmaking and hot forming operations conducted at non-integrated steel mills. Such operations include steelmaking in electric arc furnaces; vacuum degassing and continuous casting of molten steels; and, hot forming of flat-rolled steels, steel shapes and pipe and tube. The provisions of this subpart are also applicable to steelmaking operations in electric arc furnaces and related vacuum degassing, continuous casting and hot forming operations conducted at any location.

§ 420.51 Subcategory definitions.

As used in this subpart:

(a) *Product* means:

(1) Steel produced in electric furnaces before further processing in ladle metallurgy stations or casting operations;

(2) Flat-rolled steel, steel shapes or pipe and tube produced by hot-forming operations. The daily operating

(production) rate shall be determined in accordance with § 420.3.

(b) Except for the term "product," definitions set out for subpart C of this part are applicable to this subpart.

(c) *Electric arc furnace* means one in which the heat is supplied by an electric arc from graphite electrodes to the molten metal bath. The charge is generally 100% scrap metal.

§ 420.52 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve, for each applicable operation, the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

EFFLUENT LIMITATIONS (BPT)

Process wastewater source	Maximum daily [1]	Maximum monthly avg.[1]
(a) Electric arc furnaces	([2])	([2])
(b) Vacuum degassing:		
(1) Oil & grease		
(2) TSS	0.0312	0.0104
(c) Continuous casting:		
(1) Oil & grease	0.0468	0.0156
(2) TSS	0.156	0.052
(d) Hot forming mills:		
(1) Oil & grease	0.0748	
(2) TSS	0.300	0.112
(e) Ladle metallurgy	([2])	([2])

[1] Pounds per ton of product.
[2] There shall be no discharge of process wastewater pollutants to waters of the U.S. for electric arc furnaces or ladle metallurgy.

§ 420.53 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best control technology for conventional pollutants (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best control technology for conventional pollutants (BCT): The limitations shall be the same as those specified for conventional pollutants (which are defined in 40 CFR 401.16) in § 420.52 of this subpart for the best practicable control technology currently available (BPT).

§ 420.54 Effluent limitations attainable by the application of the best available control technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available control technology economically achievable (BAT).

(a) *Carbon and Alloy Steels.* The following effluent limitations apply to discharges in the carbon and alloy steels segment for each operation as applicable.

(1) *Electric arc furnaces.* There shall be no discharge of process wastewater pollutants to waters of the U.S.

(2) *Vacuum degassing; continuous casting.* The following table is Effluent Limitations (BAT) for vacuum degassing and continuous casting:

CARBON AND ALLOY STEELS—EFFLUENT LIMITATIONS (BAT)

	Maximum daily [1]	Maximum monthly avg.[1]
Lead	0.0000122	0.00000634
Zinc	0.0000101	0.00000450

[1] Pounds per ton of product.

(3) *Hot forming operations.* The following table is Effluent Limitations (BAT) for hot forming operations:

CARBON AND ALLOY STEELS—EFFLUENT LIMITATIONS (BAT)

	Maximum daily [1]	Maximum monthly avg.[1]
Lead	0.0000609	0.0000317
Zinc	0.0000506	0.0000225

[1] Pounds per ton of product.

(4) *Ladle Metallurgy.* There shall be no discharge of process wastewater pollutants to waters of the U.S.

(b) *Stainless Steels.* The following effluent limitations apply to discharges in the stainless steels segment for each operation as applicable.

(1) *Electric arc furnaces.* There shall be no discharge of process wastewater pollutants to waters of the U.S.

(2) *Vacuum degassing; continuous casting.* The following table is Effluent Limitations (BAT) for vacuum degassing and continuous casting:

STAINLESS STEELS—EFFLUENT LIMITATIONS (BAT)

	Maximum daily [1]	Maximum monthly avg.[1]
Chromium	0.00000808	0.00000362
Nickel	0.0000275	0.0000144

[1] Pounds per ton of product.

(3) *Hot forming operations.* The following table is Effluent Limitations (BAT) for hot forming operations:

STAINLESS STEELS—EFFLUENT LIMITATIONS (BAT)

	Maximum daily [1]	Maximum monthly avg [1]
Chromium	0.0000404	0.0000181
Nickel	0.000137	0.0000720

[1] Pounds per ton of product.

(4) *Ladle Metallurgy.* There shall be no discharge of process wastewater pollutants to waters of the U.S.

§ 420.55 New Source Performance Standards (NSPS).

New sources subject to this subpart must achieve the following new source performance standards (NSPS), as applicable.

(a) Any new source subject to the provisions of this section that commenced discharging after [insert date 10 years prior to the date that is 60 days after the publication date of the final rule] and before [insert date that is 60 days after the publication date of the final rule] must continue to achieve the standards specified in the 2000 version of § 420.74. toxic and nonconventional pollutants, those standards shall not apply after the expiration of the applicable time period specified in 40 CFR 122.29(d)(1); thereafter, the source must achieve the standards specified in § 420.54.

(b) The following standards apply with respect to each new source that commences construction after [insert date that is 60 days after the publication date of the final rule].

(1) *Carbon and alloy steels.* The following performance standards apply to discharges in the carbon and alloy steels segment for each operation as applicable: There shall be no discharge of process wastewater pollutants to waters of the U.S.

(2) *Stainless steels.* The following performance standards apply to discharges in the stainless steels segment for each operation as applicable: There shall be no discharge of process wastewater pollutants to waters of the U.S.

§ 420.56 Pretreatment Standards for Existing Sources (PSES).

Except as provided in 40 CFR 403.7and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and achieve the following pretreatment standards for existing sources.

(a) *Carbon and alloy steels.* The following pretreatment standards apply to discharges in the carbon and alloy steels segment for each operation as applicable:

(1) *Electric arc furnace steelmaking—semi-wet.* [Reserved.]

(2) *Vacuum degassing; continuous casting.* The following table is Pretreatment Standards (PSES) for vacuum degassing and continuous casting:

CARBON AND ALLOY STEELS.—PRETREATMENT STANDARDS (PSES)

	Maximum daily [1]	Maximum monthly avg.[1]
Lead	0.0001878	0.0000626
Zinc	0.000282	0.0000938

[1] Pounds per ton of product.

(3) *Hot forming operations.* Any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

(4) *Ladle Metallurgy.* There shall be no discharge of process wastewater pollutants to POTWs.

(b) *Stainless steels.* The following pretreatment standards apply to discharges in the stainless steels segment for each operation as applicable.

(1) *Electric arc furnaces.* There shall be no discharge of process wastewater pollutants to POTWs.

(2) *Vacuum degassing; continuous casting.* The following table is Pretreatment Standards (PSES) for vacuum degassing and continuous casting:

STAINLESS STEELS—PRETREATMENT STANDARDS (PSES)

	Maximum daily [1]	Maximum monthly avg.[1]
Chromium	0.00000808	0.00000362
Nickel	0.0000275	0.0000144

[1] Pounds per ton of product.

(3) *Hot forming operations.* The following table is Pretreatment Standards (PSES) for hot forming operations:

STAINLESS STEELS—PRETREATMENT STANDARDS (PSES)

	Maximum daily [1]	Maximum monthly avg.[1]
Chromium	0.0000404	0.0000181
Nickel	0.000137	0.0000720

[1] Pounds per ton of product.

(4) *Ladle Metallurgy.* There shall be no discharge of process wastewater pollutants to POTWs.

§ 420.57 Pretreatment Standards for New Sources (PSNS).

New sources subject to this subpart must achieve the following pretreatment standards for new sources (PSNS), as applicable.

(a) Any new source subject to the provisions of this section that commenced discharging after [insert date 10 years prior to the date that is 60 days after the publication date of the final rule] and before [insert date that is 60 days after the publication date of the final rule] must continue to achieve the standards specified in the 2000 version of § 420.76 for ten years beginning on the date the source commenced discharge or during the period of depreciation or amortization of the facility, whichever comes first, after which the source must achieve the standards specified in § 420.56.

(b) Except as provided in 40 CFR 403.7, the following standards apply with respect to each new source that commences construction after [insert date that is 60 days after the publication date of the final rule]:

(1) *Carbon and alloy steels.* The following performance standards apply to discharges in the carbon and alloy steels segment for each operation as applicable: There shall be no discharge of process wastewater pollutants to POTWs.

(2) *Stainless steels.* The following effluent limitations apply to discharges in the stainless steels segment for each operation as applicable: There shall be no discharge of process wastewater pollutants to POTWs.

Subpart F—Steel Finishing Subcategory

§ 420.60 Applicability.

(a) The provisions of this subpart are applicable to discharges and the introduction of pollutants into publicly owned treatment works resulting from carbon, alloy and stainless steel finishing operations. Such operations include descaling, acid pickling, cold rolling and annealing, acid and alkaline cleaning, continuous hot dip coating and electroplating of metals on steels.

(b) Wastewater discharges from the following operations on steel are subject to this subpart: Cold forming, continuous electroplating, or continuous hot dip coating of sheets, strips or plates.

(c) This subpart does not apply to discharges of process wastewater from surface finishing or cold forming operations on steel wire, rod, bar, pipe or tubing. This subpart does not apply to process wastewater from these same operations when they are performed on base materials other than steel. Wastewater discharges from performing these operations are subject to 40 CFR part 438.

§ 420.61 Subcategory definitions.

As used in this subpart:

(a) *Product* means:

(1) Steel processed (including rework) for descaling, acid pickling and acid or alkaline cleaning operations;

(2) Finished rolled steel for cold rolling and annealing operations; and

(3) Finished coated steel for hot coating and electroplating operations. The daily operating (production) rate shall be determined in accordance with § 420.3.

(b) *Acid cleaning* means surface treatment of steel products using acid solutions conducted after cold rolling operations and prior to subsequent surface coating operations, and associated rinsing operations.

(c) *Acid pickling* means the first surface treatment of steel products using acid solutions conducted after hot forming operations for chemical removal of oxides and scale, and associated rinsing operations.

(d) *Acid purification units* or acid recovery units means those devices used for recovery and/or reconstitution of acid solutions from used acid pickling solutions.

(e) *Acid regeneration* means recovery of hydrochloric acid from used pickling solutions.

(f) *Alkaline cleaning* means surface treatment of steel products using alkaline solutions and associated rinses, which are conducted after cold rolling operations and prior to subsequent surface coating operations.

(g) *Bar* means a finished hot-rolled steel product.

(h) *Batch* means those steel finishing operations in which semi-finished steel products are processed in discrete batches.

(i) *Cold forming* means operations conducted on unheated steel for purposes of imparting desired mechanical properties and surface qualities (density, smoothness) to the steel.

(j) *Cold working* means operations (rolling, forging, stretching) conducted on unheated (often ambient temperature) steel that change structure, shape and create a permanent increase in hardness and strength.

(k) *Combination* means cold rolling operations which include recirculation of rolling solutions at one or more mill stands, and once-through use of rolling solutions at the remaining stand or stands.

(l) *Combination pickling* means acid pickling operations using more than one acid solution or mixed acid solutions.

(m) *Continuous* means operations in which semi-finished steel products are processed on a continuous or semi-continuous basis.

(n) *Descaling* means removal of scale from semi-finished steel products by action of molten salt baths or chemical solutions.

(o) *Direct application* means cold rolling operations which include once-through use of rolling solutions at all mill stands.

(p) *Electrolytic descaling* means removal of scale from semi-finished steel products by electrolysis utilizing sodium sulfate solutions.

(q) *Electroplating* means the application of metal coatings including, but not limited to, chromium, copper, nickel, tin, zinc and combinations thereof on steel products using an electro-chemical process.

(r) *Flat bar* means a semi-finished hot-rolled flat steel product.

(s) *Fume scrubbers* means emission control devices used to collect and clean fumes originating in acid pickling, acid cleaning, alkaline cleaning and steel coating operations.

(t) *Hot coating-galvanizing* means coating steel products with zinc or mixtures of zinc and aluminum by the hot dip process, including related operations preceding and subsequent to immersing the steel in the molten metal.

(u) *Hot coating-terne* means coating steel products with terne (lead and zinc) metal by the hot dip process, including related operations proceeding and subsequent to immersing the steel in the molten metal.

(v) *Hydrochloric acid pickling* means acid pickling operations using hydrochloric acid solutions.

(w) *Miscellaneous steel products* means flat rolled strip and sheet steel products other than wire and fasteners.

(x) *Multiple stands* means those recirculation or direct application cold rolling mills which include more than one stand of work rolls.

(y) *Other hot coating* means coating steel products with metals other than zinc or terne metal by the hot dip process, including related operations preceding and subsequent to immersing the steel in the molten metal.

(z) *Pickling* means the descaling process by which the hard black oxide formed on the steel surface during hot rolling is removed by the chemical action of acids.

(aa) *Recirculation* means cold rolling operations which include recirculation of rolling solutions at all mill stands.

(bb) *Salt bath descaling-reducing* means the removal of scale from semi-finished steel products by action of molten salt baths containing sodium hydride.

(cc) *Salt bath descaling-oxidizing* means removal of scale from semi-finished steel by action of molten salt baths other than those containing sodium hydride.

(dd) *Single stand* means those recirculation or direct application cold rolling mills which include only one stand of work rolls.

(ee) *Spent acid solution (or spent pickle liquor)* means acid solutions which are no longer effective and are discharged or removed from the pickling process.

(ff) *Tube* means a hollow steel cylinder formed usually from a strip.

(gg) *Wire rod* means a semi-finished steel product of circular cross section, generally with a diameter of approximately 0.25 inches.

§ 420.62 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

(a) Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve, for each applicable operation, the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

PERFORMANCE STANDARDS (BPT)

Pollutant TSS	Maximum daily [1]	Maximum monthly avg.[1]
(a) Salt bath descaling-oxidizing:		
(1) batch, sheet and plate	0.408	0.175
(2) batch, rod	0.246	0.105
(3) batch, pipe and tubes	0.992	0.426
(4) continuous	0.193	0.0826
(b) Salt bath descaling-reducing:		
(1) batch	0.190	0.0814
(2) continuous	1.06	0.456
(c) Acid pickling-sulfuric:		
(1) rod, coil	0.164	0.070
(2) bar, billet, bloom	0.0526	0.0226
(3) strip, sheet and plate	0.105	0.045
(4) pipe, tubes and other products	0.292	0.125
(d) Acid pickling-hydrochloric:		
(1) rod, coil	0.286	0.123
(2) strip, sheet and plate	0.164	0.070
(3) pipe, tubes and other products	0.596	0.256
(e) Acid pickling-combination:		
(1) rod, coil	0.298	0.128
(2) bar, billet, bloom	0.134	0.0576
(3) strip, sheet and plate-continuous	0.876	0.376
(4) strip, sheet and plate-batch	0.268	0.115
(5) pipe, tubes and other products	0.450	0.193
(f) Cold rolling mills:		
(1) recirculation-single stand	0.0025	0.00125

PERFORMANCE STANDARDS (BPT)—Continued

Pollutant TSS	Maximum daily [1]	Maximum monthly avg.[1]
(2) recirculation-multiple stands	0.0125	0.00626
(3) combination	0.150	0.0752
(4) direct application-single stand	0.045	0.0226
(5) direct applicatcn-mult. stands	0.200	0.100
(g) Alkaline cleaning:		
(1) batch	0.146	0.0626
(2) continuous	0.204	0.0876
(h) Hot coating: galvanizing, teme, other metals:		
(1) strip, sheet and miscellaneous products	0.350	0.150
(i) Electroplating	[2] 60	[2] 31
(j) Fume scrubbers		
Acid pickling, alkaline cleaning, hot coating, other	[3] 12.58	[3] 5.39
(k) Absorber vent scrubber, hydrochloric acid regeneration	[3] 84.04	[3] 35.86

Pollutant oil & grease	Maximum daily [1]	Maximum monthly avg.[1]
(a) Salt bath descaling-oxidizing:		
(1) batch, sheet and plate	NA	NA
(2) batch, rod	NA	NA
(3) batch, pipe and tubes	NA	NA
(4) continuous	NA	NA
(b) Salt bath descaling-reducing:		
(1) batch	NA	NA
(2) continuous	NA	NA
(c) Acid pickling-sulfuric [4]:		
(1) rod, coil	0.0700	0.0234
(2) bar, billet, bloom	0.0226	0.00750
(3) strip, sheet and plate	0.0450	0.0150
(4) pipe, tubes and other products	0.125	0.0418
(d) Acid pickling-hydrochloric [4]:		
(1) rod, coil	0.123	0.0408
(2) strip, sheet and plate	0.0700	0.0234
(3) pipe, tubes and other products	0.256	0.0852
(e) Acid pickling-combination [4]:		
(1) rod, coil	0.128	0.0426
(2) bar, billet, bloom	0.0576	0.0192
(3) strip, sheet and plate-continuous	0.376	0.125
(4) strip, sheet and plate-batch	0.115	0.0384
(5) pipe, tubes and other products	0.193	0.0644
(f) Cold rolling mills:		
(1) recirculation-single stand	0.00104	0.000418
(2) recirculation-multiple stands	0.0522	0.00208
(3) combination	0.0626	0.0250
(4) direct application-single stand	0.0188	0.00752
(5) direct application-mult. stands	0.0834	0.0334
(g) Alkaline cleaning:		
(1) batch	0.0626	0.0208
(2) continuous	0.0876	0.0292
(h) Hot coating: galvanizing, terne, other metals:		
(1) strip, sheet and miscellaneous products	0.150	0.0500
(i) Electroplating	[2] 52	[2] 26
(j) Fume scrubbers:		
Acid pickling, alkaline cleaning, hot coating, other	[3] 5.39	[3] 1.76
(k) Absorber vent scrubber, hydrochloric acid regeneration	[3] 35.86	[3] 11.99

[1] Pounds per ton of product for all operations except electroplating, fume scrubbers, and adsorber vent scrubbers.
[2] The values are expressed in milligrams per liter for this operation.
[3] The values are expressed in pounds per day for this operation.
[4] The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

§ 420.63 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best control technology for conventional pollutants (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best control technology for conventional pollutants (BCT): The limitations shall be the same as those specified for conventional pollutants (which are defined in 40 CFR 401.16) in § 420.62 of this subpart for the best practicable control technology currently available (BPT).

§ 420.64 Effluent limitations attainable by the application of the best available control technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available control technology economically achievable (BAT).

(a) *Ammonia (as N)* (1) *Stainless Steel.* The following effluent limitations apply to discharges in the stainless steels segment for each operation as applicable. Increased mass discharges may be provided by the permit authority on a site-specific basis to account for unregulated process wastewaters and non-process wastewaters (*e.g.*, oily wastewater from hot forming mill basements and roll shops, tramp oils from mill oil collection systems, utility wastewaters, groundwater remediation wastewaters), but only to the extent such flows are co-treated with process wastewaters regulated by this subpart and generate an increased effluent volume. Such increased mass discharges shall be calculated as a percentage increase of the mass discharge otherwise applicable on the basis of the increased effluent volume.

EFFLUENT LIMITATIONS (BAT)

	Maximum daily [1]	Maximum monthly avg.[1]
(i) Acid pickling and other descaling:		
(A) bar, billet	0.0437	0.0287
(B) pipe, tube	0.146	0.0960
(C) plate	0.00665	0.00436
(D) strip, sheet	0.133	0.0873
(ii) Wet air pollution control devices:		
(A) fume scrubbers	[2] 4.109	[2] 2.69

[1] Pounds per ton of product for all operations except fume scrubbers.
[2] The values are expressed in pounds per day for this operation.

(b) *Chromium (VI).* (1) *Carbon and Alloy Steel.* The following effluent limitations apply to discharges in the carbon and alloy steels segment for each operation as applicable. Increased mass discharges may be provided by the permit authority on a site-specific basis to account for unregulated process wastewaters and non-process wastewaters (*e.g.*, oily wastewater from hot forming mill basements and roll shops, tramp oils from mill oil collection systems, utility wastewaters, groundwater remediation wastewaters), but only to the extent such flows are co-treated with process wastewaters regulated by this subpart and generate an increased effluent volume. Such increased mass discharges shall be calculated as a percentage increase of the mass discharge otherwise applicable on the basis of the increased effluent volume. The effluent limitations for chromium (VI) shall be applicable only when chromium (VI) is present in untreated wastewaters as a result of process or other operations.

EFFLUENT LIMITATIONS (BAT)

	Maximum daily [1]	Maximum monthly avg.[1]
(i) Acid pickling—hydrochloric:		
(A) bar, billet, rod, coil	0.0000508	0.0000463
(B) pipe, tube	0.000106	0.0000963
(C) plate	0.0000363	0.00000330
(D) strip, sheet	0.0000518	0.00000472
(ii) Acid pickling—sulfuric:		
(A) bar, billet, rod, coil	0.0000290	0.0000264
(B) pipe, tube	0.0000518	0.0000472
(C) plate	0.00000363	0.00000330
(D) strip, sheet	0.0000238	0.0000217
(iii) Acid regeneration:		
(A) fume scrubbers	[2] 0.0149	[2] 0.0136
(iv) Alkaline cleaning:		
(A) pipe, tube	0.00000207	0.00000189
(B) strip, sheet	0.0000363	0.0000330
(v) Cold forming:		
(A) direct application-single stand	0.000000311	0.000000283
(B) direct application-multiple stands	0.0000285	0.0000260
(C) recirculation-single stand	0.000000104	0.000000944
(D) recirculation-multiple stands	0.00000259	0.00000236
(E) combination-multiple stand	0.0000148	0.0000135
(vi) Continuous annealing lines	0.00000207	0.00000189

EFFLUENT LIMITATIONS (BAT)—Continued

	Maximum daily [1]	Maximum monthly avg.[1]
(vii) Electroplating:		
(A) plate	0.00000363	0.00000330
(B) strip, sheet: tin, chromium	0.000114	0.000104
(C) strip, sheet: zinc, other metals	0.0000570	0.0000519
(viii) Hot coating:		
(A) galvanizing, terne and other metals	0.0000570	0.0000519
(ix) Wet air pollution control devices:		
(A) fume scrubbers	[2] 0.00224	[2] 0.00204

[1] Pounds per ton of product for all operations except fume scrubbers.
[2] The values are expressed in pounds per day for this operation.

(2) *Stainless Steel.* The following effluent limitations apply to discharges in the stainless steels segment for each operation as applicable. Increased mass discharges may be provided by the permit authority on a site-specific basis to account for unregulated process wastewaters and non-process wastewaters (*e.g.,* oily wastewater from hot forming mill basements and roll shops, tramp oils from mill oil collection systems, utility wastewaters, groundwater remediation wastewaters), but only to the extent such flows are co-treated with process wastewaters regulated by this subpart and generate an increased effluent volume. Such increased mass discharges shall be calculated as a percentage increase of the mass discharge otherwise applicable on the basis of the increased effluent volume.

EFFLUENT LIMITATIONS (BAT)

	Maximum daily [1]	Maximum monthly avg.[1]
(i) Acid pickling and other descaling:		
(A) bar, billet	0.000318	0.000196
(B) pipe, tube	0.00107	0.000655
(C) plate	0.0000484	0.0000298
(D) strip, sheet	0.000969	0.000595
(ii) Acid regeneration:		
(A) fume scrubbers	[2] 0.199	[2] 0.122
(iii) Alkaline cleaning:		
(A) pipe, tube	0.0000277	0.0000170
(B) strip, sheet	0.00346	0.00213
(iv) Cold forming:		
(A) direct application-single stand	0.0000484	0.0000298
(B) direct application-multiple stands	0.000381	0.000234
(C) recirculation-single stand	0.00000415	0.00000255
(D) recirculation-multiple stands	0.0000221	0.0000136
(E) combination-multiple stand	0.000198	0.000122
(v) Continuous annealing	0.0000277	0.0000170
(vi)Wet air pollution control devices:		
(A) fume scrubbers	[2] 0.0299	[2] 0.0184

[1] Pounds per ton of product for all operations except fume scrubbers.
[2] The values are expressed in pounds per day for this operation.

(c) *Chromium.* (1) *Carbon and Alloy Steel.* The following effluent limitations apply to discharges in the carbon and alloy steels segment for each operation as applicable. Increased mass discharges may be provided by the permit authority on a site-specific basis to account for unregulated process wastewaters and non-process wastewaters (*e.g.,* oily wastewater from hot forming mill basements and roll shops, tramp oils from mill oil collection systems, utility wastewaters, groundwater remediation wastewaters), but only to the extent such flows are co-treated with process wastewaters regulated by this subpart and generate an increased effluent volume. Such increased mass discharges shall be calculated as a percentage increase of the mass discharge otherwise applicable on the basis of the increased effluent volume. The effluent limitations for chromium shall be applicable only when chromium is present in untreated wastewaters as a result of process or other operations.

EFFLUENT LIMITATIONS (BAT)

	Maximum daily [1]	Maximum monthly avg.[1]
(i) Acid pickling—hydrochloric:		
(A) bar, billet, rod, coil	0.000227	0.000117
(B) pipe, tube	0.000472	0.000243
(C) plate	0.0000162	0.00000834

EFFLUENT LIMITATIONS (BAT)—Continued

	Maximum daily [1]	Maximum monthly avg. [1]
(D) strip, sheet	0.0000231	0.0000119
(ii) Acid pickling—sulfuric:		
(A) bar, billet, rod, coil	0.000130	0.0000668
(B) pipe, tube	0.000231	0.000119
(C) plate	0.0000162	0.00000834
(D) strip, sheet	0.000106	0.0000548
(iii) Acid regeneration:		
(A) fume scrubbers	[2] 0.0666	[2] 0.0343
(iv) Alkaline cleaning:		
(A) pipe, tube	0.00000925	0.00000477
(B) strip, sheet	0.000162	0.0000834
(v) Cold forming:		
(A) direct application-single stand	0.00000139	0.000000715
(B) direct application-multiple stands	0.000127	0.0000656
(C) recirculation-single stand	0.000000463	0.000000238
(D) recirculation-multiple stands	0.0000116	0.00000596
(E) combination-multiple stand	0.0000662	0.0000341
(vi) Continuous annealing lines	0.00000925	0.00000477
(vii) Electroplating:		
(A) plate	0.0000162	0.00000834
(B) strip, sheet: tin, chromium	0.000509	0.000262
(C) strip, sheet: zinc, other metals	0.000255	0.000131
(viii) Hot coating:		
(A) galvanizing, terne and other metals	0.000255	0.000131
(ix) Wet air pollution control devices:		
(A) fume scrubbers	[2] 0.00999	[2] 0.00515

[1] Pounds per ton of product for all operations except fume scrubbers.
[2] The values are expressed in pounds per day for this operation.

(2) *Stainless Steel.* The following effluent limitations apply to discharges in the stainless steels segment for each operation as applicable. Increased mass discharges may be provided by the permit authority on a site-specific basis to account for unregulated process wastewaters and non-process wastewaters (*e.g.,* oily wastewater from hot forming mill basements and roll shops, tramp oils from mill oil collection systems, utility wastewaters, groundwater remediation wastewaters), but only to the extent such flows are co-treated with process wastewaters regulated by this subpart and generate an increased effluent volume. Such increased mass discharges shall be calculated as a percentage increase of the mass discharge otherwise applicable on the basis of the increased effluent volume.

EFFLUENT LIMITATIONS (BAT)

	Maximum daily [1]	Maximum monthly avg. [1]
(i) Acid pickling and other descaling:		
(A) bar, billet	0.000500	0.000280
(B) pipe, tube	0.00167	0.000939
(C) plate	0.0000760	0.0000427
(D) strip, sheet	0.00152	0.000854
(ii) Acid regeneration:		
(A) fume scrubbers	[2] 0.313	[2] 0.176
(iii) Alkaline cleaning:		
(A) pipe, tube	0.0000434	0.0000244
(B) strip, sheet	0.00543	0.00305
(iv) Cold forming:		
(A) direct application-single stand	0.0000760	0.0000427
(B) direct application-multiple stands	0.000597	0.000335
(C) recirculation-single stand	0.00000652	0.00000366
(D) recirculation-multiple stands	0.0000348	0.0000195
(E) combination-multiple stand	0.000311	0.000174
(v) Continuous annealing	0.0000434	0.0000244
(vi) Wet air pollution control devices:		
(A) fume scrubbers	[2] 0.0469	[2] 0.0263

[1] Pounds per ton of product for all operations except fume scrubbers.
[2] The values are expressed in pounds per day for this operation.

(d) *Fluoride.* (1) *Stainless Steel.* The following effluent limitations apply to discharges in the stainless steels segment for each operation as applicable. Increased mass discharges may be provided by the permit authority on a site-specific basis to account for unregulated process wastewaters and non-process wastewaters (*e.g.*, oily wastewater from hot forming mill basements and roll shops, tramp oils from mill oil collection systems, utility wastewaters, groundwater remediation wastewaters), but only to the extent such flows are co-treated with process wastewaters regulated by this subpart and generate an increased effluent volume. Such increased mass discharges shall be calculated as a percentage increase of the mass discharge otherwise applicable on the basis of the increased effluent volume.

EFFLUENT LIMITATIONS (BAT)

	Maximum daily [1]	Maximum monthly avg. [1]
(i) Acid pickling and other descaling:		
(A) bar, billet	0.0446	0.0356
(B) pipe, tube	0.149	0.119
(C) plate	0.00679	0.00542
(D) strip, sheet	0.136	0.108
(ii) Wet air pollution control devices:		
(A) fume scrubbers	[2] 4.19	[2] 3.34

[1] Pounds per ton of product for all operations except fume scrubbers.
[2] The values are expressed in pounds per day for this operation.

(e) *Lead.* (1) *Carbon and Alloy Steel.* The following effluent limitations apply to discharges in the carbon and alloy steels segment for each operation as applicable. Increased mass discharges may be provided by the permit authority on a site-specific basis to account for unregulated process wastewaters and non-process wastewaters (*e.g.*, oily wastewater from hot forming mill basements and roll shops, tramp oils from mill oil collection systems, utility wastewaters, groundwater remediation wastewaters), but only to the extent such flows are co-treated with process wastewaters regulated by this subpart and generate an increased effluent volume. Such increased mass discharges shall be calculated as a percentage increase of the mass discharge otherwise applicable on the basis of the increased effluent volume.

EFFLUENT LIMITATIONS (BAT)

	Maximum daily [1]	Maximum monthly avg. [1]
(i) Acid pickling—hydrochloric:		
(A) bar, billet, rod, coil	0.000596	0.000311
(B) pipe, tube	0.00124	0.000647
(C) plate	0.0000426	0.0000222
(D) strip, sheet	0.00609	0.0000317
(ii) Acid pickling—sulfuric:		
(A) bar, billet, rod, coil	0.000341	0.000178
(B) pipe, tube	0.000609	0.000317
(C) plate	0.0000426	0.0000222
(D) strip, sheet	0.000280	0.000146
(iii) Acid regeneration:		
(A) fume scrubbers	[2] 0.175	[2] 0.913
(iv) Alkaline cleaning:		
(A) pipe, tube	0.0000243	0.0000127
(B) strip, sheet	0.000426	0.000222
(v) Cold forming:		
(A) direct application-single stand	0.00000365	0.00000190
(B) direct application-multiple stands	0.000335	0.000174
(C) recirculation-single stand	0.00000122	0.00000634
(D) recirculation-multiple stands	0.0000304	0.0000159
(E) combination-multiple stand	0.000174	0.0000907
(vi) Continuous annealing lines	0.0000243	0.0000127
(vii) Electroplating:		
(A) plate	0.0000426	0.0000222
(B) strip, sheet: tin, chromium	0.000134	0.000698
(C) strip, sheet: zinc, other metals	0.000669	0.000349
(viii) Hot coating:		
(A) galvanizing, terne and other metals	0.000669	0.000349
(ix) Wet air pollution control devices:		
(A) fume scrubbers	[2] 0.026396	[2] 0.0137

[1] Pounds per ton of product for all operations except fume scrubbers.
[2] The values are expressed in pounds per day for this operation.

(f) *Nickel.* (1) *Stainless Steel.* The following effluent limitations apply to discharges in the stainless steels segment for each operation as applicable. Increased mass discharges may be provided by the permit authority on a site-specific basis to account for unregulated process wastewaters and non-process wastewaters (*e.g.*, oily wastewater from hot forming mill basements and roll shops, tramp oils from mill oil collection systems, utility wastewaters, groundwater remediation wastewaters), but only to the extent such flows are co-treated with process wastewaters regulated by this subpart and generate an increased effluent volume. Such increased mass discharges shall be calculated as a percentage increase of the mass discharge otherwise applicable on the basis of the increased effluent volume.

EFFLUENT LIMITATIONS (BAT)

	Maximum daily [1]	Maximum monthly avg.[1]
(i) Acid pickling and other descaling:		
(A) bar, billet	0.000147	0.000104
(B) pipe, tube	0.000494	0.000347
(C) plate	0.0000224	0.0000158
(D) strip, sheet	0.000449	0.000315
(ii) Acid regeneration:		
(A) fume scrubbers	[2] 0.0923	[2] 0.0649
(iii) Alkaline cleaning:		
(A) pipe, tube	0.0000128	0.00000901
(B) strip, sheet	[2] 0.00160	[2] 0.00113
(iv) Cold forming:		
(A) direct application-single stand	0.0000224	0.0000158
(B) direct application-multiple stands	0.000176	0.000124
(C) recirculation-single stand	0.00000192	0.00000135
(D) recirculation-multiple stands	0.0000103	0.00000721
(E) combination-multiple stand	0.0000917	0.0000644
(v) Continuous annealing	0.0000128	0.00000901
(vi) Wet air pollution control devices:		
(A) fume scrubbers	[2] 0.0138	[2] 0.00973

[1] Pounds per ton of product for all operations except fume scrubbers.
[2] The values are expressed in pounds per day for this operation.

(g) *Zinc.* (1) *Carbon and Alloy Steel.* The following effluent limitations apply to discharges in the carbon and alloy steels segment for each operation as applicable. Increased mass discharges may be provided by the permit authority on a site-specific basis to account for unregulated process wastewaters and non-process wastewaters (*e.g.*, oily wastewater from hot forming mill basements and roll shops, tramp oils from mill oil collection systems, utility wastewaters, groundwater remediation wastewaters), but only to the extent such flows are co-treated with process wastewaters regulated by this subpart and generate an increased effluent volume. Such increased mass discharges shall be calculated as a percentage increase of the mass discharge otherwise applicable on the basis of the increased effluent volume.

EFFLUENT LIMITATIONS (BAT)

	Maximum daily [1]	Maximum monthly avg.[1]
(i) Acid pickling—hydrochloric:		
(A) bar, billet, rod, coil	0.000637	0.000262
(B) pipe, tube	0.00133	0.00546
(C) plate	0.0000455	0.0000187
(D) strip, sheet	0.0000650	0.0000267
(i) Acid pickling—sulfuric:		
(A) bar, billet, rod, coil	0.000364	0.000150
(B) pipe, tube	0.000650	0.000267
(C) plate	0.0000455	0.0000187
(D) strip, sheet	0.000299	0.000123
(ii) Acid regeneration:		
(A) fume scrubbers	[2] 0.187	[2] 0.0770
(iii) Alkaline cleaning:		
(A) pipe, tube	0.0000260	0.0000107
(B) strip, sheet	0.000455	0.000187
(iv) Cold forming:		
(A) direct application-single stand	0.00000390	0.00000160
(B) direct application-multiple stands	0.000357	0.000147
(C) recirculation-single stand	0.00000130	0.00000535
(D) recirculation-multiple stands	0.0000325	0.0000134
(E) combination-multiple stand	0.000186	0.0000765
(v) Continuous annealing	0.0000260	0.0000107
(vii) Electroplating:		

EFFLUENT LIMITATIONS (BAT)—Continued

	Maximum daily [1]	Maximum monthly avg.[1]
(A) plate	0.0000455	0.0000187
(B) strip, sheet: tin, chromium	0.00143	0.000588
(C) strip, sheet: zinc, other metals	0.000715	0.000294
(viii) Hot coating:		
(A) galvanizing, terne and other metals	0.000715	0.000294
(ix) Wet air pollution control devices:		
(A) fume scrubbers	[2] 0.0281	[2] 0.0116

[1] Pounds per ton of product for all operations except fume scrubbers.
[2] The values are expressed in pounds per day for this operation.

§ 420.65 New Source Performance Standards (NSPS).

New sources subject to this subpart must achieve the following new source performance standards (NSPS), as applicable.

(a) Any new source subject to the provisions of this section that commenced discharging after *[insert date 10 years prior to the date that is 60 days after the publication date of the final rule]* and before *[insert date that is 60 days after the publication date of the final rule]* must continue to achieve the applicable standards specified in the 2000 version of §§ 420.84, 420.94, 420.104, 420.114, and 420.124. toxic and nonconventional pollutants, those standards shall not apply after the expiration of the applicable time period specified in 40 CFR 122.29(d)(1); thereafter, the source must achieve the applicable standards specified in § 420.64.

(b) The following standards apply with respect to each new source that commences construction after *[insert date that is 60 days after the publication date of the final rule]*.

(1) *Total Suspended Solids.* (i) *Carbon and Alloy Steel.* The following performance standards apply to discharges in the carbon and alloy steels segment for each operation as applicable. Increased mass discharges may be provided by the permit authority on a site-specific basis to account for unregulated process wastewaters and non-process wastewaters (e.g., oily wastewater from hot forming mill basements and roll shops, tramp oils from mill oil collection systems, utility wastewaters, groundwater remediation wastewaters), but only to the extent such flows are co-treated with process wastewaters regulated by this subpart and generate an increased effluent volume. Such increased mass discharges shall be calculated as a percentage increase of the mass discharge otherwise applicable on the basis of the increased effluent volume.

PERFORMANCE STANDARDS (NSPS)

	Maximum daily [1]	Maximum monthly avg.[1]
(i) Acid pickling—hydrochloric:		
(A) bar, billet, rod, coil	0.0566	0.0308
(B) pipe, tube	0.118	0.0641
(C) plate	0.00405	0.00220
(D) strip, sheet	0.00578	0.00314
(ii) Acid pickling—sulfuric:		
(A) bar, billet, rod, coil	0.0324	0.0176
(B) pipe, tube	0.0578	0.0314
(C) plate	0.00405	0.00220
(D) strip, sheet	0.0266	0.0145
(iii) Acid regeneration:		
(A) fume scrubbers	[2] 16.6	[2] 9.05
(iv) Alkaline cleaning:		
(A) pipe, tube	0.00231	0.00126
(B) strip, sheet	0.0405	0.0220
(v) Cold forming:		
(A) direct application-single stand	0.000347	0.000189
(B) direct application-multiple stands	0.0318	0.0173
(C) recirculation-single stand	0.000116	0.0000628
(D) recirculation-multiple stands	0.00289	0.00157
(E) combination-multiple stand	0.0165	0.00899
(vi) Continuous annealing lines	0.00231	0.00126
(vii) Electroplating:		
(A) plate	0.00405	0.00220
(B) strip, sheet: tin, chromium	0.127	0.0691
(C) strip, sheet: zinc, other metals	0.0636	0.0346
(viii) Hot coating:		
(A) galvanizing, terne and other metals	0.0636	0.0346
(ix) Wet air pollution control devices:		
(A) fume scrubbers	[2] 2.50	[2] 1.36

[1] Pounds per ton of product for all operations except fume scrubbers.
[2] The values are expressed in pounds per day for this operation.

(ii) *Stainless Steel.* The following performance standards apply to discharges in the stainless steels segment for each operation as applicable. Increased mass discharges may be provided by the permit authority on a site-specific basis to account for unregulated process wastewaters and non-process wastewaters (e.g., oily wastewater from hot forming mill basements and roll shops, tramp oils from mill oil collection systems, utility wastewaters, groundwater remediation wastewaters), but only to the extent such flows are co-treated with process wastewaters regulated by this subpart and generate an increased effluent volume. Such increased mass discharges shall be calculated as a percentage increase of the mass discharge otherwise applicable on the basis of the increased effluent volume.

PERFORMANCE STANDARDS (NSPS)

	Maximum daily [1]	Maximum monthly avg. [1]
(A) Acid pickling and other descaling:		
(1) bar, billet	0.0242	0.0121
(2) pipe, tube	0.0809	0.0406
(3) plate	0.00368	0.00184
(4) strip, sheet	0.0735	0.0369
(B) Acid regeneration:		
(1) fume scrubbers	[2] 15.1	[2] 7.59
(C) Alkaline cleaning:		
(1) pipe, tube	0.00210	0.00105
(2) strip, sheet	0.263	0.132
(D) Cold forming:		
(1) direct application-single stand	0.00368	0.00184
(2) direct application-multiple stands	0.0289	0.0145
(3) recirculation-single stand	0.000315	0.000158
(4) recirculation-multiple stands	0.00168	0.000843
(5) combination-multiple stand	0.0150	0.00754
(E) Continuous annealing	0.00210	0.00105
(F) Wet air pollution control devices:		
(1) fume scrubbers	[2] 2.27	[2] 1.14

[1] Pounds per ton of product for all operations except fume scrubbers.
[2] The values are expressed in pounds per day for this operation.

(2) *Oil & Grease.* (i) *Carbon and Alloy Steel.* The following performance standards apply to discharges in the carbon and alloy steels segment for each operation as applicable. Increased mass discharges may be provided by the permit authority on a site-specific basis to account for unregulated process wastewaters and non-process wastewaters (e.g., oily wastewater from hot forming mill basements and roll shops, tramp oils from mill oil collection systems, utility wastewaters, groundwater remediation wastewaters), but only to the extent such flows are co-treated with process wastewaters regulated by this subpart and generate an increased effluent volume. Such increased mass discharges shall be calculated as a percentage increase of the mass discharge otherwise applicable on the basis of the increased effluent volume.

PERFORMANCE STANDARDS (NSPS)

	Maximum daily [1]	Maximum monthly avg. [1]
(A) Acid pickling—hydrochloric:		
(1) bar, billet, rod, coil	0.0307	0.0274
(2) pipe, tube	0.638	0.0571
(3) plate	0.00219	0.00196
(4) strip, sheet	0.00313	0.00280
(B) Acid pickling—sulfuric:		
(1) bar, billet, rod, coil	0.0175	0.0157
(2) pipe, tube	0.0313	0.0280
(3) plate	0.00219	0.00196
(4) strip, sheet	0.0144	0.0129
(C) Acid regeneration:		
(1) fume scrubbers	[2] 9.01	[2] 8.07
(D) Alkaline cleaning:		
(1) pipe, tube	0.00125	0.00112
(2) strip, sheet	0.0219	0.0196
(E) Cold forming:		
(1) direct application-single stand	0.000188	0.000168
(2) direct application-multiple stands	0.0172	0.0154
(3) recirculation-single stand	0.0000626	0.0000560
(4) recirculation-multiple stands	0.00156	0.00140
(5) combination-multiple stand	0.0895	0.00801
(F) Continuous annealing lines	0.00125	0.00112
(G) Electroplating:		

PERFORMANCE STANDARDS (NSPS)—Continued

	Maximum daily [1]	Maximum monthly avg.[1]
(1) strip, sheet: tin, chromium	0.00219	0.0196
(2) strip, sheet: zinc, other metals	0.0688	0.0616
(3) plate	0.0344	0.0308
(H) Hot coating:		
(1) galvanizing, teme and other metals	0.0344	0.0308
(I) Wet air pollution control devices:		
(1) fume scrubbers	[2] 1.35	[2] 1.21

[1] Pounds per ton of product for all operations except fume scrubbers.
[2] The values are expressed in pounds per day for this operation.

(ii) *Stainless Steel.* The following performance standards apply to discharges in the stainless steels segment for each operation as applicable. Increased mass discharges may be provided by the permit authority on a site-specific basis to account for unregulated process wastewaters and non-process wastewaters (e.g., oily wastewater from hot forming mill basements and roll shops, tramp oils from mill oil collection systems, utility wastewaters, groundwater remediation wastewaters), but only to the extent such flows are co-treated with process wastewaters regulated by this subpart and generate an increased effluent volume. Such increased mass discharges shall be calculated as a percentage increase of the mass discharge otherwise applicable on the basis of the increased effluent volume.

PERFORMANCE STANDARDS (NSPS)

	Maximum daily [1]	Maximum monthly avg.[1]
(A) Acid pickling and other descaling:		
(1) bar, billet	0.0172	0.0136
(2) pipe, tube	0.0576	0.0456
(3) plate	0.00262	0.00207
(4) strip, sheet	0.0523	0.0414
(B) Acid regeneration:		
(1) fume scrubbers	[2] 10.8	[2] 8.52
(C) Alkaline cleaning:		
(1) pipe, tube	0.00149	0.00118
(2) strip, sheet	0.187	0.148
(D) Cold forming:		
(1) direct application-single stand	0.00262	0.00207
(2) direct application-multiple stands	0.0206	0.0163
(3) recirculation-single stand	0.000224	0.000177
(4) recirculation-multiple stands	0.00120	0.000947
(5) combination-multiple stand	0.0107	0.00846
(E) Continuous annealing	0.00149	0.00118
(F) Wet air pollution control devices:		
(1) fume scrubbers	[2] 1.61	[2] 1.28

[1] Pounds per ton of product for all operations except fume scrubbers.
[2] The values are expressed in pounds per day for this operation.

(3) *Ammonia as (N).* (i) *Stainless Steel.* The following performance standards apply to discharges in the stainless steels segment for each operation as applicable. Increased mass discharges may be provided by the permit authority on a site-specific basis to account for unregulated process wastewaters and non-process wastewaters (e.g., oily wastewater from hot forming mill basements and roll shops, tramp oils from mill oil collection systems, utility wastewaters, groundwater remediation wastewaters), but only to the extent such flows are co-treated with process wastewaters regulated by this subpart and generate an increased effluent volume. Such increased mass discharges shall be calculated as a percentage increase of the mass discharge otherwise applicable on the basis of the increased effluent volume.

PERFORMANCE STANDARDS (NSPS)

	Maximum daily [1]	Maximum monthly avg.[1]
(A) Acid pickling and other descaling:		
(1) bar, billet	0.0437	0.0287
(2) pipe, tube	0.146	0.0960
(3) plate	0.00665	0.00436
(4) strip, sheet	0.133	0.0873
(B) Wet air pollution control devices:		

PERFORMANCE STANDARDS (NSPS)—Continued

	Maximum daily [1]	Maximum monthly avg.[1]
(1) fume scrubbers	[2]4.10	[2]2.69

[1] Pounds per ton of product for all operations except fume scrubbers.
[2] The values are expressed in pounds per day for this operation.

(4) *Chromium (VI).* (i) *Carbon and Alloy Steel.* The following performance standards apply to discharges in the carbon and alloy steels segment for each operation as applicable. Increased mass discharges may be provided by the permit authority on a site-specific basis to account for unregulated process wastewaters and non-process wastewaters (e.g., oily wastewater from hot forming mill basements and roll shops, tramp oils from mill oil collection systems, utility wastewaters, groundwater remediation wastewaters), but only to the extent such flows are co-treated with process wastewaters regulated by this subpart and generate an increased effluent volume. Such increased mass discharges shall be calculated as a percentage increase of the mass discharge otherwise applicable on the basis of the increased effluent volume. The performance standards for chromium (VI) shall be applicable only when chromium (VI) is present in untreated wastewaters as a result of process or other operations.

PERFORMANCE STANDARDS (NSPS)

	Maximum daily [1]	Maximum monthly avg.[1]
(A) Acid pickling—hydrochloric:		
(1) bar, billet, rod, coil	0.0000508	0.0000463
(2) pipe, tube	0.000106	0.0000963
(3) plate	0.00000363	0.00000330
(4) strip, sheet	0.00000518	0.00000472
(B) Acid pickling—sulfuric:		
(1) bar, billet, rod, coil	0.0000290	0.0000264
(2) pipe, tube	0.0000518	0.0000472
(3) plate	0.00000363	0.00000330
(4) strip, sheet	0.0000238	0.0000217
(C) Acid regeneration:		
(1) fume scrubbers	[2]0.0149	[2]0.0136
(D) Alkaline cleaning:		
(1) pipe, tube	0.00000207	0.00000189
(2) strip, sheet	0.0000363	0.0000330
(E) Cold forming:		
(1) direct application-single stand	0.000000311	0.000000283
(2) direct application-multiple stands	0.0000285	0.0000260
(3) recirculation-single stand	0.000000104	0.000000944
(4) recirculation-multiple stands	0.00000259	0.00000236
(5) combination-multiple stand	0.0000148	0.0000135
(F) Continuous annealing lines	0.00000207	0.00000189
(G) Electroplating:		
(1) plate	0.00000363	0.00000330
(2) strip, sheet: tin, chromium	0.000114	0.000104
(3) strip, sheet: zinc, other metals	0.0000570	0.0000519
(H) Hot coating:		
(1) galvanizing, terne and other metals	0.0000570	0.0000519
(I) Wet air pollution control devices:		
(1) fume scrubbers	[2]0.00224	[2]0.00204

[1] Pounds per ton of product for all operations except fume scrubbers.
[2] The values are expressed in pounds per day for this operation.

(ii) *Stainless Steel.* The following performance standards apply to discharges in the stainless steels segment for each operation as applicable. Increased mass discharges may be provided by the permit authority on a site-specific basis to account for unregulated process wastewaters and non-process wastewaters (e.g., oily wastewater from hot forming mill basements and roll shops, tramp oils from mill oil collection systems, utility wastewaters, groundwater remediation wastewaters), but only to the extent such flows are co-treated with process wastewaters regulated by this subpart and generate an increased effluent volume. Such increased mass discharges shall be calculated as a percentage increase of the mass discharge otherwise applicable on the basis of the increased effluent volume.

PERFORMANCE STANDARDS (NSPS)

	Maximum daily [1]	Maximum monthly avg.[1]
(A) Acid pickling and other descaling:		
(1) bar, billet	0.000318	0.000196
(2) pipe, tube	0.00107	0.000655
(3) plate	0.0000484	0.0000298
(4) strip, sheet	0.000969	0.000595
(B) Acid regeneration:		
(1) fume scrubbers	[2]0.199	[2]0.122
(C) Alkaline cleaning:		
(1) pipe, tube	0.0000277	0.0000170
(2) strip, sheet	0.00346	0.00213
(D) Cold forming:		
(1) direct application-single stand	0.0000484	0.0000298
(2) direct application-multiple stands	0.000381	0.000234
(3) recirculation-single stand	0.00000415	0.00000255
(4) recirculation-multiple stands	0.0000221	0.0000136
(5) combination-multiple stand	0.000198	0.000122
(E) Continuous annealing	0.0000277	0.0000170
(F) Wet air pollution control devices:		
(1) fume scrubbers	[2]0.0299	[2]0.0184

[1] Pounds per ton of product for all operations except fume scrubbers.
[2] The values are expressed in pounds per day for this operation.

(5) *Chromium.* (i) *Carbon and Alloy Steel.* The following performance standards apply to discharges in the carbon and alloy steels segment for each operation as applicable. Increased mass discharges may be provided by the permit authority on a site-specific basis to account for unregulated process wastewaters and non-process wastewaters (*e.g.,* oily wastewater from hot forming mill basements and roll shops, tramp oils from mill oil collection systems, utility wastewaters, groundwater remediation wastewaters), but only to the extent such flows are co-treated with process wastewaters regulated by this subpart and generate an increased effluent volume. Such increased mass discharges shall be calculated as a percentage increase of the mass discharge otherwise applicable on the basis of the increased effluent volume. The performance standards for chromium shall be applicable only when chromium is present in untreated wastewaters as a result of process or other operations.

PERFORMANCE STANDARDS (NSPS)

	Maximum daily [1]	Maximum monthly avg.[1]
(A) Acid pickling—hydrochloric:		
(1) bar, billet, rod, coil	0.000227	0.000117
(2) pipe, tube	0.000472	0.000243
(3) plate	0.0000162	0.00000834
(4) strip, sheet	0.0000231	0.0000119
(B) Acid pickling—sulfuric:		
(1) bar, billet, rod, coil	0.000130	0.0000668
(2) pipe, tube	0.000231	0.000119
(3) plate	0.0000162	0.00000834
(4) strip, sheet	0.000106	0.0000548
(C) Acid regeneration:		
(1) fume scrubbers	[2]0.0666	[2]0.0343
(D) Alkaline cleaning:		
(1) pipe, tube	0.00000925	0.00000477
(2) strip, sheet	0.000162	0.0000834
(D) Cold forming:		
(1) direct application-single stand	0.00000139	0.000000715
(2) direct application-multiple stands	0.000127	0.0000656
(3) recirculation-single stand	0.000000463	0.000000238
(4) recirculation-multiple stands	0.0000116	0.00000596
(5) combination-multiple stand	0.0000662	0.0000341
(F) Continuous annealing lines	0.00000925	0.00000477
(G) Electroplating:		
(1) plate	0.0000162	0.00000834
(2) strip, sheet: tin, chromium	0.000509	0.000262
(3) strip, sheet: zinc, other metals	0.000255	0.000131
(H) Hot coating:		
(1) galvanizing, terne and other metals	0.000255	0.000131
(I) Wet air pollution control devices:		
(1) fume scrubbers	[2]0.0010	[2]0.00515

[1] Pounds per ton of product for all operations except fume scrubbers.

[2] The values are expressed in pounds per day for this operation.

(ii) *Stainless Steel.* The following performance standards apply to discharges in the stainless steels segment for each operation as applicable. Increased mass discharges may be provided by the permit authority on a site-specific basis to account for unregulated process wastewaters and non-process wastewaters (*e.g.*, oily wastewater from hot forming mill basements and roll shops, tramp oils from mill oil collection systems, utility wastewaters, groundwater remediation wastewaters), but only to the extent such flows are co-treated with process wastewaters regulated by this subpart and generate an increased effluent volume. Such increased mass discharges shall be calculated as a percentage increase of the mass discharge otherwise applicable on the basis of the increased effluent volume.

PERFORMANCE STANDARDS (NSPS)

	Maximum daily [1]	Maximum monthly avg.[1]
(A) Acid pickling and other descaling:		
(1) bar, billet	0.000500	0.000280
(2) pipe, tube	0.00167	0.000939
(3) plate	0.0000760	0.0000427
(4) strip, sheet	0.00152	0.000854
(B) Acid regeneration:		
(1) fume scrubbers	[2] 0.313	[2] 0.176
(C) Alkaline cleaning:		
(1) pipe, tube	0.0000434	0.0000244
(2) strip, sheet	0.00543	0.00305
(D) Cold forming:		
(1) direct application-single stand	0.0000760	0.0000427
(2) direct application-multiple stands	0.000597	0.000335
(3) recirculation-single stand	0.00000652	0.00000366
(4) recirculation-multiple stands	0.0000348	0.0000195
(5) combination-multiple stand	0.000311	0.000174
(E) Continuous annealing	0.0000434	0.0000244
(F) Wet air pollution control devices:		
(1) fume scrubbers	[2] 0.0469	[2] 0.0263

[1] Pounds per ton of product for all operations except fume scrubbers.
[2] The values are expressed in pounds per day for this operation.

(6) *Fluoride.* (i) *Stainless Steel.* The following performance standards apply to discharges in the stainless steels segment for each operation as applicable. Increased mass discharges may be provided by the permit authority on a site-specific basis to account for unregulated process wastewaters and non-process wastewaters (*e.g.*, oily wastewater from hot forming mill basements and roll shops, tramp oils from mill oil collection systems, utility wastewaters, groundwater remediation wastewaters), but only to the extent such flows are co-treated with process wastewaters regulated by this subpart and generate an increased effluent volume. Such increased mass discharges shall be calculated as a percentage increase of the mass discharge otherwise applicable on the basis of the increased effluent volume.

PERFORMANCE STANDARDS (NSPS)

	Maximum daily [1]	Maximum monthly avg.[1]
(A) Acid pickling and other descaling:		
(1) bar, billet	0.0446	0.0356
(2) pipe, tube	0.149	0.119
(3) plate	0.00679	0.00542
(4) strip, sheet	0.136	0.108
(B) Wet air pollution control devices:		
(1) fume scrubbers	[2] 4.19	[2] 3.34

[1] Pounds per ton of product for all operations except fume scrubbers.
[2] The values are expressed in pounds per day for this operation.

(7) *Lead.* (i) *Carbon and Alloy Steel.* The following performance standards apply to discharges in the carbon and alloy steels segment for each operation as applicable. Increased mass discharges may be provided by the permit authority on a site-specific basis to account for unregulated process wastewaters and non-process wastewaters (*e.g.*, oily wastewater from hot forming mill basements and roll shops, tramp oils from mill oil collection systems, utility wastewaters, groundwater remediation wastewaters), but only to the extent such flows are co-treated with process wastewaters regulated by this subpart and generate an increased effluent volume. Such increased mass discharges shall be calculated as a percentage increase of the mass discharge otherwise

applicable on the basis of the increased effluent volume.

PERFORMANCE STANDARDS (NSPS)

	Maximum daily [1]	Maximum monthly avg.[1]
(A) Acid pickling—hydrochloric:		
(1) bar, billet. rod, coil	0.000596	0.000311
(2) pipe, tube	0.00124	0.000647
(3) plate	0.0000426	0.0000222
(4) strip, sheet	0.0000609	0.0000317
(B) Acid pickling—sulfuric:		
(1) bar, billet, rod, coil	0.000341	0.000178
(2) pipe, tube	0.000609	0.000317
(3) plate	0.0000426	0.0000222
(4) strip, sheet	0.000280	0.000146
(C) Acid regeneration:		
(1) fume scrubbers	[2] 0.175	[2] 0.0913
(D) Alkaline cleaning:		
(1) pipe, tube	0.0000243	0.0000127
(2) strip, sheet	0.000426	0.000222
(E) Cold forming:		
(1) direct application-single stand	0.00000365	0.00000190
(2) direct application-multiple stands	0.000335	0.000174
(3) recirculation-single stand	0.00000122	0.000000634
(4) recirculation-multiple stands	0.0000304	0.0000159
(5) combination-multiple stands	0.000174	0.0000907
(F) Continuous annealing lines	0.0000243	0.0000127
(G) Electroplating:		
(1) strip, sheet: tin, chromium	0.0000426	0.0000222
(2) strip, sheet: zinc, other metals	0.00134	0.000698
(3) plate	0.000669	0.000349
(H) Hot coating:		
(1) galvanizing, terne and other metals	0.000669	0.000349
(I) Wet air pollution control devices:		
(1) fume scrubbers	[2] 0.0263	[2] 0.0137

[1] Pounds per ton of product for all operations except fume scrubbers.
[2] The values are expressed in pounds per day for this operation.

(8) *Nickel.* (i) *Stainless Steel.* The following performance standards apply to discharges in the stainless steels segment for each operation as applicable. Increased mass discharges may be provided by the permit authority on a site-specific basis to account for unregulated process wastewaters and non-process wastewaters (*e.g.,* oily wastewater from hot forming mill basements and roll shops, tramp oils from mill oil collection systems, utility wastewaters, groundwater remediation wastewaters), but only to the extent such flows are co-treated with process wastewaters regulated by this subpart and generate an increased effluent volume. Such increased mass discharges shall be calculated as a percentage increase of the mass discharge otherwise applicable on the basis of the increased effluent volume.

PERFORMANCE STANDARDS (NSPS)

	Maximum daily [1]	Maximum monthly avg.[1]
(A) Acid pickling and other descaling:		
(1) bar, billet	0.000147	0.000104
(2) pipe, tube	0.000494	0.000347
(3) plate	0.0000224	0.0000158
(4) strip, sheet	0.000449	0.000315
(B) Acid regeneration:		
(1) fume scrubbers	[2] 0.0923	[2] 0.0649
(C) Alkaline cleaning:		
(1) pipe, tube	0.0000128	0.00000901
(2) strip, sheet	0.00160	0.00113
(D) Cold forming:		
(1) direct application-single stand	0.0000224	0.0000158
(2) direct application-multiple stands	0.000176	0.000124
(3) recirculation-single stand	0.00000192	0.00000135
(4) recirculation-multiple stands	0.0000103	0.00000721
(5) combination-multiple stand	0.0000917	0.0000644
(E) Continuous annealing	0.0000128	0.00000901
(F) Wet air pollution control devices:		

PERFORMANCE STANDARDS (NSPS)—Continued

	Maximum daily [1]	Maximum monthly avg.[1]
(1) fume scrubbers	0.01382	0.009732

[1] Pounds per ton of product for all operations except fume scrubbers.
[2] The values are expressed in pounds per day for this operation.

(9) *Zinc.* (i) *Carbon and Alloy Steel.* The following performance standards apply to discharges in the carbon and alloy steels segment for each operation as applicable. Increased mass discharges may be provided by the permit authority on a site-specific basis to account for unregulated process wastewaters and non-process wastewaters (*e.g.*, wastewater from hot forming mill basements and roll shops, tramp oils from mill oil collection systems, utility wastewaters, groundwater remediation wastewaters), but only to the extent such flows are co-treated with process wastewaters regulated by this subpart and generate an increased effluent volume. Such increased mass discharges shall be calculated as a percentage increase of the mass discharge otherwise applicable on the basis of the increased effluent volume.

PERFORMANCE STANDARDS (NSPS)

	Maximum daily [1]	Maximum monthly avg.[1]
(i) Acid pickling—hydrochloric:		
(A) bar, billet, rod, coil	0.000637	0.000262
(B) pipe, tube	0.00133	0.000546
(C) plate	0.0000455	0.0000187
(D) strip, sheet	0.0000650	0.0000267
(ii) Acid pickling—sulfuric:		
(A) bar, billet, rod, coil	0.000364	0.000150
(B) pipe, tube	0.000650	0.000267
(C) plate	0.0000455	0.0000187
(D) strip, sheet	0.000299	0.000123
(iii) Acid regeneration:		
(A) fume scrubbers	[2] 0.1872	[2] 0.07702
(iv) Alkaline cleaning:		
(A) pipe, tube	0.0000260	0.0000107
(B) strip, sheet	0.000455	0.000187
(v) Cold forming:		
(A) direct application-single stand	0.00000390	0.00000160
(B) direct application-multiple stands	0.000357	0.000147
(C) recirculation-single stand	0.00000130	0.000000535
(D) recirculation-multiple stands	0.0000325	0.0000134
(E) combination-multiple stand	0.000186	0.0000765
(vi) Continuous annealing lines	0.0000260	0.0000107
(vii) Electroplating:		
(A) plate	0.0000455	0.0000187
(B) strip, sheet: tin, chromium	0.00143	0.000588
(C) strip, sheet: zinc, other metals	0.000715	0.000294
(viii) Hot coating:		
(A) galvanizing, terne and other metals	0.000715	0.000294
(ix) Wet air pollution control devices:		
(A) fume scrubbers	0.02812	0.01162

[1] Pounds per ton of product for all operations except fume scrubbers.
[2] The values are expressed in pounds per day for this operation.

§ 420.66 Pretreatment Standards for Existing Sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and achieve the following pretreatment standards for existing sources.

(a) Salt bath descaling, oxidizing.

(1) Batch, sheet and plate.

PRETREATMENT STANDARDS (PSES)

Pollutant	Maximum daily [1]	Maximum monthly avg.[1]
Chromium	0.00584	0.00234
Nickel	0.00526	0.001752

[1] Pounds per ton of product.

(2) Batch, rod and wire.

PERFORMANCE STANDARDS (PSES)

Pollutant	Maximum daily [1]	Maximum monthly avg.[1]
Chromium	0.00350	0.001402
Nickel	0.00316	0.001052

[1] Pounds per ton of product.

(3) Batch, pipe and tube.

PERFORMANCE STANDARDS (PSES)

Pollutant	Maximum daily [1]	Maximum monthly avg.[1]
Chromium	0.01418	0.00568
Nickel	0.01276	0.00426

[1] Pounds per ton of product.

(4) Continuous.

PERFORMANCE STANDARDS (PSES)

Pollutant	Maximum daily [1]	Maximum monthly avg.[1]
Chromium	0.00276	0.001102
Nickel	0.00248	0.000826

[1] Pounds per ton of product.

(b) Salt bath descaling, reducing. (1) Batch.

PERFORMANCE STANDARDS (PSES)

Pollutant	Maximum daily [1]	Maximum monthly avg.[1]
Chromium	0.00272	0.00108
Nickel	0.00244	0.000814

[1] Pounds per ton of product.

(2) Continuous.

PERFORMANCE STANDARDS (PSES)

Pollutant	Maximum daily [1]	Maximum monthly avg.[1]
Chromium	0.0152	0.00608
Nickel	0.01366	0.00456

[1] Pounds per ton of product.

(c) Sulfuric acid (spent acid solutions and rinse waters). (1) Rod, wire, and coil.

PERFORMANCE STANDARDS (PSES)

Pollutant	Maximum daily [1]	Maximum monthly avg.[1]
Lead	0.001052	0.000350
Zinc	0.001402	0.000468

[1] Pounds per ton of product.

(2) Bar, billet, and bloom.

PERFORMANCE STANDARDS (PSES)

Pollutant	Maximum daily [1]	Maximum monthly avg.[1]
Lead	0.000338	0.0001126
Zinc	0.000450	0.0001502

[1] Pounds per ton of product.

(3) Strip, sheet, and plate.

PERFORMANCE STANDARDS (PSES)

Pollutant	Maximum daily [1]	Maximum monthly avg.[1]
Lead	0.000676	0.000226
Zinc	0.000902	0.000300

[1] Pounds per ton of product.

(4) Pipe, tube, and other products.

PERFORMANCE STANDARDS (PSES)

Pollutant	Maximum daily [1]	Maximum monthly avg.[1]
Lead	0.001878	0.000626
Zinc	0.00250	0.000834

[1] Pounds per ton of product.

(5) Fume scrubber.

PERFORMANCE STANDARDS (PSES) [2]

Pollutant	Maximum daily [1]	Maximum monthly avg.[1]
Lead	0.0810	0.0271
Zinc	0.1080	0.0361

[1] Pounds per day.
[2] The above limitations shall be applicable for each fume scrubber associated with sulfuric acid pickling operations.

(d) Hydrochloric acid pickling (spent acid solutions and rinse waters).

(1) Rod, wire, and coil.

PERFORMANCE STANDARDS (PSES)

Pollutant	Maximum daily[1]	Maximum monthly avg.[1]
Lead	0.00184	0.000614
Zinc	0.00246	0.000818

[1] Pounds per ton of product.

(2) Strip, sheet, and plate.

PERFORMANCE STANDARDS (PSES)

Pollutant	Maximum daily[1]	Maximum monthly avg.[1]
Lead	0.001052	0.000350
Zinc	0.001402	0.000468

[1] Pounds per ton of product.

(3) Pipe, tube, and other products.

PERFORMANCE STANDARDS (PSES)

Pollutant	Maximum daily[1]	Maximum monthly avg.[1]
Lead	0.00384	0.001276
Zinc	0.00510	0.001702

[1] Pounds per ton of product.

(4) Fume scrubber.

PERFORMANCE STANDARDS (PSES)[2]

Pollutant	Maximum daily[1]	Maximum monthly avg.[1]
Lead	0.0810	0.0271
Zinc	0.1080	0.0361

[1] Pounds per day.
[2] The above limitations shall be applicable for each fume scrubber associated with hydrochloric acid pickling operations.

(5) Acid regeneration (absorber vent scrubber).

PERFORMANCE STANDARDS (PSES)[2]

Pollutant	Maximum daily[1]	Maximum monthly avg.[1]
Lead	0.539	0.1802
Zinc	0.719	0.240

[1] Pounds per day.
[2] The above limitations shall be applicable to the absorber vent scrubber wastewater associated with hydrochloric acid regeneration plants.

(e) Combination acid pickling (spent acid solutions and rinse waters).

(1) Rod, wire, and coil.

PERFORMANCE STANDARDS (PSES)

Pollutant	Maximum daily[1]	Maximum monthly avg.[1]
Chromium	0.00426	0.001704
Nickel	0.00384	0.001276

[1] Pounds per ton of product.

(2) Bar, billet, and bloom.

PERFORMANCE STANDARDS (PSES)

Pollutant	Maximum daily[1]	Maximum monthly avg.[1]
Chromium	0.001920	0.000768
Nickel	0.001728	0.000576

[1] Pounds per ton of product.

(3) Strip, sheet, and plat-continuous.

PERFORMANCE STANDARDS (PSES)

Pollutant	Maximum daily[1]	Maximum monthly avg.[1]
Chromium	0.01252	0.00500

PERFORMANCE STANDARDS (PSES)—Continued

Pollutant	Maximum daily[1]	Maximum monthly avg.[1]
Nickel	0.01126	0.00376

[1] Pounds per ton of product.

(4) Strip, sheet, and plate-batch.

PERFORMANCE STANDARDS (PSES)

Pollutant	Maximum daily[1]	Maximum monthly avg.[1]
Chromium	0.00384	0.001536
Nickel	0.00346	0.001152

[1] Pounds per ton of product.

(5) Pipe, tube, and other products.

PERFORMANCE STANDARDS (PSES)

Pollutant	Maximum daily[1]	Maximum monthly avg.[1]
Chromium	0.00644	0.00258
Nickel	0.00578	0.001928

[1] Pounds per ton of product.

(6) Fume scrubber.

PERFORMANCE STANDARDS (PSES)

Pollutant	Maximum daily[1]	Maximum monthly avg.[1]
Chromium	0.1802	0.0719
Nickel	0.1617	0.0539

[1] Pounds per day.
[2] The above limitations shall be applicable to each fume scrubber associated with a combination acid pickling operation.

(f) Cold rolling.

(1) Recirculation-single stand.

PERFORMANCE STANDARDS (PSES)

Pollutant	Maximum daily[1]	Maximum monthly avg.[1]
Chromium[2]	0.0000418	0.0000168
Lead	0.0000188	0.0000062
Nickel[2]	0.0000376	0.0000126
Zinc	0.0000126	0.0000042

[1] Pounds per ton of product.
[2] The limitations for chromium and nickel shall be applicable in lieu of those for lead and zinc when cold rolling wastewaters are treated with descaling or combination acid pickling wastewaters.

(2) Recirculation-multiple stands.

PERFORMANCE STANDARDS (PSES)

Pollutant	Maximum daily[1]	Maximum monthly avg.[1]
Chromium[2]	0.000208	0.0000836
Lead	0.0000938	0.0000312
Nickel[2]	0.0001878	0.0000626

PERFORMANCE STANDARDS (PSES)—Continued

Pollutant	Maximum daily[1]	Maximum monthly avg.[1]
Zinc	0.0000626	0.0000208

[1] Pounds per ton of product.
[2] The limitations for chromium and nickel shall be applicable in lieu of those for lead and zinc when cold rolling wastewaters are treated with descaling or combination acid pickling wastewaters.

(3) Combination.

PERFORMANCE STANDARDS (PSES)

Pollutant	Maximum daily [1]	Maximum monthly avg.[1]
Chromium [2]	0.00250	0.001002
Lead	0.001126	0.000376
Nickel [2]	0.00226	0.000752
Zinc	0.000752	0.000250

[1] Pounds per ton of product.
[2] The limitations for chromium and nickel shall be applicable in lieu of those for lead and zinc when cold rolling wastewaters are treated with descaling or combination acid pickling wastewaters.

(4) Direct application-single stand.

PERFORMANCE STANDARDS (PSES)

Pollutant	Maximum daily [1]	Maximum monthly avg.[1]
Chromium [2]	0.000752	0.000300
Lead	0.000338	0.0001126
Nickel[2]	0.000676	0.000226
Zinc	0.000226	0.0000752

[1] Pounds per ton of product.
[2] The limitations for chromium and nickel shall be applicable in lieu of those for lead and zinc when cold rolling wastewaters are treated with descaling or combination acid pickling wastewaters.

(5) Direct application-multiple stands.

PERFORMANCE STANDARDS (PSES)

Pollutant	Maximum daily [1]	Maximum monthly avg.[1]
Chromium [2]	0.00334	0.001336
Lead	0.001502	0.000500
Nickel [2]	0.0030	0.001002
Zinc	0.001002	0.000334

[1] Pounds per ton of product.
[2] The limitations for chromium and nickel shall be applicable in lieu of those for lead and zinc when cold rolling wastewaters are treated with descaling or combination acid pickling wastewaters.

(g) Electroplating.

PRETREATMENT STANDARDS (PSES)

Pollutant	Maximum daily [1]	Maximum monthly avg.[1]
Chromium	2.77	1.71
Lead	0.69	0.43
Nickel	3.98	2.38
Zinc	2.61	1.48

[1] Milligrams per liter.

(h) Galvanizing, terne coating and other coatings.

(1) Strip, sheet, and miscellaneous products.

PERFORMANCE STANDARDS (PSES)

Pollutant	Maximum daily [1]	Maximum monthly avg.[1]
Chromium (hexavalent) [2]	0.000300	0.0001002
Lead	0.00226	0.000752
Zinc	0.00300	0.001000

[1] Pounds per ton of product.
[2] The limitations for hexavalent chromium shall be applicable only to galvanizing operations which discharge wastewaters from the chromate rinse step.

(2) Fume scrubbers.

PERFORMANCE STANDARDS (PSES)

Pollutant	Maximum daily [1]	Maximum monthly avg.[1]
Chromium (hexavalent) [2]	0.01078	0.003586
Lead	0.0810	0.0271
Zinc	0.1080	0.0361

[1] Pounds per day.
[2] The limitations for hexavalent chromium shall be applicable only to galvanizing operations which discharge wastewaters from the chromate rinse step.

§ 420.67 Pretreatment Standards for New Sources (PSNS).

New sources subject to this subpart must achieve the following pretreatment standards for new sources (PSNS), as applicable.

(a) Any new source subject to the provisions of this section that commenced discharging after *[insert date 10 years prior to the date that is 60 days after the publication date of the final rule]* and before *[insert date that is 60 days after the publication date of the final rule]* must continue to achieve the standards specified in the 2000 version of §§ 420.86, 420.96, 420.106, 420.116, and 420.126 for ten years beginning on the date the source commenced discharge or during the period of depreciation or amortization of the facility, whichever comes first, after which the source must achieve the standards specified in § 420.66.

(b) Except as provided in 40 CFR 403.7, the following standards apply with respect to each new source that commences construction after *[insert date that is 60 days after the publication date of the final rule]:*

(1) *Ammonia as (N).* (i) *Stainless Steel.* The following pretreatment standards apply to discharges in the stainless steels segment for each operation as applicable. Increased mass discharges may be provided by the permit authority on a site-specific basis to account for unregulated process wastewaters and non-process wastewaters (*e.g.*, oily wastewater from hot forming mill basements and roll shops, tramp oils from mill oil collection systems, utility wastewaters, groundwater remediation wastewaters), but only to the extent such flows are co-treated with process wastewaters regulated by this subpart and generate an increased effluent volume. Such increased mass discharges shall be calculated as a percentage increase of the mass discharge otherwise applicable on the basis of the increased effluent volume.

PERFORMANCE STANDARDS (PSNS)

	Maximum daily [1]	Maximum monthly avg.[1]
(A) Acid pickling and other descaling:		
(1) bar, billet	0.0437	0.0287
(2) pipe, tube	0.146	0.0960
(3) plate	0.00665	0.00436
(4) strip, sheet	0.133	0.0873
(B) Wet air pollution control devices:		
(1) fume scrubbers	[2] 4.10	[2] 2.69

[1] Pounds per ton of product for all operations except fume scrubbers.
[2] The values are expressed in pounds per day for this operation.

(2) *Chromium (VI).* (i) *Carbon and Alloy Steel.* The following pretreatment standards apply to discharges in the carbon and alloy steels segment for each operation as applicable. Increased mass discharges may be provided by the permit authority on a site-specific basis to account for unregulated process wastewaters and non-process wastewaters (*e.g.*, oily wastewater from hot forming mill basements and roll shops, tramp oils from mill oil collection systems, utility wastewaters, groundwater remediation wastewaters), but only to the extent such flows are co-treated with process wastewaters regulated by this subpart and generate an increased effluent volume. Such

increased mass discharges shall be calculated as a percentage increase of the mass discharge otherwise applicable on the basis of the increased effluent volume. The pretreatment standards for chromium (VI) shall be applicable only when chromium (VI) is present in untreated wastewaters as a result of process or other operations.

PRETREATMENT STANDARDS (PSNS)

	Maximum daily [1]	Maximum monthly avg.[1]
(A) Acid pickling—hydrochloric:		
(1) bar, billet, rod, coil	0.0000508	0.0000463
(2) pipe, tube	0.000106	0.0000963
(3) plate	0.00000363	0.00000330
(4) strip, sheet	0.00000518	0.00000472
(B) Acid pickling—sulfuric:		
(1) bar, billet, rod, coil	0.0000290	0.0000264
(2) pipe, tube	0.0000518	0.0000472
(3) plate	0.00000363	0.00000330
(4) strip, sheet	0.0000238	0.0000217
(C) Acid regeneration:		
(1) fume scrubbers	[2] 0.0149	[2] 0.0136
(D) Alkaline cleaning:		
(1) pipe, tube	0.00000207	0.00000189
(2) strip, sheet	0.0000363	0.0000330
(E) Cold forming:		
(1) direct application-single stand	0.000000311	0.000000283
(2) direct application-multiple stands	0.0000285	0.0000260
(3) recirculation-single stand	0.000000104	0.000000944
(4) recirculation-multiple stands	0.00000259	0.00000236
(5) combination-multiple stand	0.0000148	0.0000135
(F) Continuous annealing lines	0.00000207	0.00000189
(G) Electroplating:		
(1) plate	0.00000363	0.00000330
(2) strip, sheet: tin, chromium	0.000114	0.000104
(3) strip, sheet: zinc, other metals	0.0000570	0.0000519
(H) Hot coating:		
(1) galvanizing, terne and other metals	0.0000570	0.0000519
(I) Wet air pollution control devices:		
(1) fume scrubbers	[2] 0.00224	[2] 0.00204

[1] Pounds per ton of product for all operations except fume scrubbers.
[2] The values are expressed in pounds per day for this operation.

(ii) *Stainless Steel.* The following pretreatment standards apply to discharges in the stainless steels segment for each operation as applicable. Increased mass discharges may be provided by the permit authority on a site-specific basis to account for unregulated process wastewaters and non-process wastewaters (*e.g.*, oily wastewater from hot forming mill basements and roll shops, tramp oils from mill oil collection systems, utility wastewaters, groundwater remediation wastewaters), but only to the extent such flows are co-treated with process wastewaters regulated by this subpart and generate an increased effluent volume. Such increased mass discharges shall be calculated as a percentage increase of the mass discharge otherwise applicable on the basis of the increased effluent volume.

PRETREATMENT STANDARDS (PSNS)

	Maximum daily [1]	Maximum monthly avg.[1]
(A) Acid pickling and other descaling:		
(1) bar, billet	0.000318	0.000196
(2) pipe, tube	0.00107	0.000655
(3) plate	0.0000484	0.0000298
(4) strip, sheet	0.000969	0.000595
(B) Acid regeneration:		
(1) fume scrubbers	[2] 0.199	[2] 0.122
(C) Alkaline cleaning:		
(1) pipe, tube	0.0000277	0.0000170
(2) strip, sheet	0.00346	0.00213
(D) Cold forming:		
(1) direct application-single stand	0.0000484	0.0000298
(2) direct application-multiple stands	0.000381	0.000234
(3) recirculation-single stand	0.00000415	0.00000255
(4) recirculation-multiple stands	0.0000221	0.0000136
(5) combination-multiple stand	0.000198	0.000122
(E) Continuous annealing	0.0000277	0.0000170

PRETREATMENT STANDARDS (PSNS)—Continued

	Maximum daily [1]	Maximum monthly avg.[1]
(F) Wet air pollution control devices:		
(1) fume scrubbers	[2] 0.0299	[2] 0.0184

[1] Pounds per ton of product for all operations except fume scrubbers.
[2] The values are expressed in pounds per day for this operation.

(3) *Chromium.* (i) *Carbon and Alloy Steel.* The following pretreatment standards apply to discharges in the carbon and alloy steels segment for each operation as applicable. Increased mass discharges may be provided by the permit authority on a site-specific basis to account for unregulated process wastewaters and non-process wastewaters (*e.g.*, oily wastewater from hot forming mill basements and roll shops, tramp oils from mill oil collection systems, utility wastewaters, groundwater remediation wastewaters), but only to the extent such flows are co-treated with process wastewaters regulated by this subpart and generate an increased effluent volume. Such increased mass discharges shall be calculated as a percentage increase of the mass discharge otherwise applicable on the basis of the increased effluent volume. The pretreatment standards for chromium shall be applicable only when chromium is present in untreated wastewaters as a result of process or other operations.

PRETREATMENT STANDARDS (PSNS)

	Maximum daily[1]	Maximum monthly avg.[1]
(A) Acid pickling—hydrochloric:		
(1) bar, billet, rod, coil	0.000227	0.000117
(2) pipe, tube	0.000472	0.000243
(3) plate	0.0000162	0.00000834
(4) strip, sheet	0.0000231	0.0000119
(B) Acid pickling—sulfuric:		
(1) bar, billet, rod, coil	0.000130	0.0000668
(2) pipe, tube	0.000231	0.000119
(3) plate	0.0000162	0.00000834
(4) strip, sheet	0.000106	0.0000548
(C) Acid regeneration:		
(1) fume scrubbers	[2] 0.0666	[2] 0.0343
(D) Alkaline cleaning:		
(1) pipe, tube	0.00000925	0.00000477
(2) strip, sheet	0.000162	0.0000834
(E) Cold forming:		
(1) direct application-single stand	0.00000139	0.000000715
(2) direct application-multiple stands	0.000127	0.0000656
(3) recirculation-single stand	0.000000463	0.000000238
(4) recirculation-multiple stands	0.0000116	0.00000596
(5) combination-multiple stand	0.0000662	0.0000341
(F) Continuous annealing lines	0.00000925	0.00000477
(G) Electroplating:		
(1) plate	0.0000162	0.00000834
(2) strip, sheet: tin, chromium	0.000509	0.000262
(3) strip, sheet: zinc, other metals	0.000255	0.000131
(H) Hot coating:		
(1) galvanizing, terne and other metals	0.000255	0.000131
(I) Wet air pollution control devices:		
(1) fume scrubbers	[2] 0.00999	[2] 0.00515

[1] Pounds per ton of product for all operations except fume scrubbers.
[2] The values are expressed in pounds per day for this operation.

(ii) *Stainless Steel.* The following pretreatment standards apply to discharges in the stainless steels segment for each operation as applicable. Increased mass discharges may be provided by the permit authority on a site-specific basis to account for unregulated process wastewaters and non-process wastewaters (*e.g.*, oily wastewater from hot forming mill basements and roll shops, tramp oils from mill oil collection systems, utility wastewaters, groundwater remediation wastewaters), but only to the extent such flows are co-treated with process wastewaters regulated by this subpart and generate an increased effluent volume. Such increased mass discharges shall be calculated as a percentage increase of the mass discharge otherwise applicable on the basis of the increased effluent volume.

PRETREATMENT STANDARDS (PSNS)

	Maximum daily [1]	Maximum monthly avg.[1]
(A) Acid pickling and other descaling:		
(1) bar, billet	0.000500	0.000280
(2) pipe, tube	0.00167	0.000939
(3) plate	0.0000760	0.0000427
(4) strip, sheet	0.00152	0.000854
(B) Acid regeneration:		
(1) fume scrubbers	[2] 0.313	[2] 0.176
(C) Alkaline cleaning:		
(1) pipe, tube	0.0000434	0.0000244
(2) strip, sheet	0.00543	0.00305
(D) Cold forming:		
(1) direct application-single stand	0.0000760	0.0000427
(2) direct application-multiple stands	0.000597	0.000335
(3) recirculation-single stand	0.00000652	0.00000366
(4) recirculation-multiple stands	0.0000348	0.0000195
(5) combination-multiple stand	0.000311	0.000174
(E) Continuous annealing	0.0000434	0.0000244
(F)Wet air pollution control devices:		
(1) fume scrubbers	[2] 0.0469	[2] 0.0263

[1] Pounds per ton of product for all operations except fume scrubbers.
[2] The values are expressed in pounds per day for this operation.

(4) *Fluoride.* (i) *Stainless Steel.* The following pretreatment standards apply to discharges in the stainless steels segment for each operation as applicable. Increased mass discharges may be provided by the permit authority on a site-specific basis to account for unregulated process wastewaters and non-process wastewaters (*e.g.*, oily wastewater from hot forming mill basements and roll shops, tramp oils from mill oil collection systems, utility wastewaters, groundwater remediation wastewaters), but only to the extent such flows are co-treated with process wastewaters regulated by this subpart and generate an increased effluent volume. Such increased mass discharges shall be calculated as a percentage increase of the mass discharge otherwise applicable on the basis of the increased effluent volume.

PRETREATMENT STANDARDS (PSNS)

	Maximum daily [1]	Maximum monthly avg.[1]
(A) Acid pickling and other descaling:		
(1) bar, billet	0.0446	0.0356
(2) pipe, tube	0.149	0.119
(3) plate	0.00679	0.00542
(4) strip, sheet	0.136	0.108
(B) Wet air pollution control devices		
(1) fume scrubbers	[2] 4.19	[2] 3.34

[1] Pounds per ton of product for all operations except fume scrubbers.
[2] The values are expressed in pounds per day for this operation.

(5) *Lead.* (i) *Carbon and Alloy Steel.* The following pretreatment standards apply to discharges in the carbon and alloy steels segment for each operation as applicable. Increased mass discharges may be provided by the permit authority on a site-specific basis to account for unregulated process wastewaters and non-process wastewaters (*e.g.*, oily wastewater from hot forming mill basements and roll shops, tramp oils from mill oil collection systems, utility wastewaters, groundwater remediation wastewaters), but only to the extent such flows are co-treated with process wastewaters regulated by this subpart and generate an increased effluent volume. Such increased mass discharges shall be calculated as a percentage increase of the mass discharge otherwise applicable on the basis of the increased effluent volume.

PRETREATMENT STANDARDS (PSNS)

	Maximum daily[1]	Maximum monthly avg.[1]
(A) Acid pickling—hydrochloric:		
(1) bar, billet, rod, coil	0.000596	0.000311
(2) pipe, tube	0.00124	0.000647
(3) plate	0.0000426	0.0000222
(4) strip, sheet	0.0000609	0.0000317
(B) Acid pickling—sulfuric:		

PRETREATMENT STANDARDS (PSNS)—Continued

	Maximum daily[1]	Maximum monthly avg.[1]
(1) bar, billet, rod, coil	0.000341	0.000178
(2) pipe, tube	0.000609	0.000317
(3) plate	0.0000426	0.0000222
(4) strip, sheet	0.000280	0.000146
(C) Acid regeneration:		
(1) fume scrubbers	[2]0.175	[2]0.0913
(D) Alkaline cleaning:		
(1) pipe, tube	0.0000243	0.0000127
(2) strip, sheet	0.000426	0.000222
(E) Cold forming:		
(1) direct application-single stand	0.00000365	0.00000190
(2) direct application-multiple stands	0.000335	0.000174
(3) recirculation-single stand	0.00000122	0.000000634
(4) recirculation-multiple stands	0.0000304	0.0000159
(5) combination-multiple stands	0.000174	0.0000907
(F) Continuous annealing lines	0.0000243	0.0000127
(G) Electroplating:		
(1) strip, sheet: tin, chromium	0.0000426	0.0000222
(2) strip, sheet: zinc, other metals	0.00134	0.000698
(3) plate	0.000669	0.000349
(H) Hot coating:		
(1) galvanizing, terne and other metals	0.000669	0.000349
(I) Wet air pollution control devices:		
(1) fume scrubbers	[2]0.0263	[2]0.0137

[1] Pounds per ton of product for all operations except fume scrubbers.
[2] The values are expressed in pounds per day for this operation.

(6) *Nickel.* (i) *Stainless Steel.* The following pretreatment standards apply to discharges in the stainless steels segment for each operation as applicable. Increased mass discharges may be provided by the permit authority on a site-specific basis to account for unregulated process wastewaters and non-process wastewaters (*e.g.*, oily wastewater from hot forming mill basements and roll shops, tramp oils from mill oil collection systems, utility wastewaters, groundwater remediation wastewaters), but only to the extent such flows are co-treated with process wastewaters regulated by this subpart and generate an increased effluent volume. Such increased mass discharges shall be calculated as a percentage increase of the mass discharge otherwise applicable on the basis of the increased effluent volume.

PRETREATMENT STANDARDS (PSNS)

	Maximum daily[1]	Maximum monthly avg.[1]
(A) Acid pickling and other descaling:		
(1) bar, billet	0.000147	0.000104
(2) pipe, tube	0.000494	0.000347
(3) plate	0.0000224	0.0000158
(4) strip, sheet	0.000449	0.000315
(B) Acid regeneration:		
(1) fume scrubbers	[2]0.0923	[2]0.0649
(C) Alkaline cleaning:		
(1) pipe, tube	0.0000128	0.00000901
(2) strip, sheet	0.00160	0.00113
(D) Cold forming:		
(1) direct application-single stand	0.0000224	0.0000158
(2) direct application-multiple stands	0.000176	0.000124
(3) recirculation-single stand	0.00000192	0.00000135
(4) recirculation-multiple stands	0.0000103	0.00000721
(5) combination-multiple stand	0.0000917	0.0000644
(E) Continuous annealing	0.0000128	0.00000901
(F) Wet air pollution control devices:		
(1) fume scrubbers	[2]0.0138	[2]0.00973

[1] Pounds per ton of product for all operations except fume scrubbers.
[2] The values are expressed in pounds per day for this operation.

(7) *Zinc.* (i) *Carbon and Alloy Steel.* The following pretreatment standards apply to discharges in the carbon and alloy steels segment for each operation as applicable. Increased mass discharges may be provided by the permit authority on a site-specific basis to account for unregulated process wastewaters and non-process wastewaters (*e.g.*, oily

wastewater from hot forming mill basements and roll shops, tramp oils from mill oil collection systems, utility wastewaters, groundwater remediation wastewaters), but only to the extent such flows are co-treated with process wastewaters regulated by this subpart and generate an increased effluent volume. Such increased mass discharges shall be calculated as a percentage increase of the mass discharge otherwise applicable on the basis of the increased effluent volume.

PRETREATMENT STANDARDS (PSNS)

	Maximum daily [1]	Maximum monthly avg. [1]
(i) Acid pickling—hydrochloric:		
(A) bar, billet, rod, coil	0.000637	0.000262
(B) pipe, tube	0.00133	0.000546
(C) plate	0.0000455	0.0000187
(D) strip, sheet	0.0000650	0.0000267
(ii) Acid pickling—sulfuric:		
(A) bar, billet, rod, coil	0.000364	0.000150
(B) pipe, tube	0.000650	0.000267
(C) plate	0.0000455	0.0000187
(D) strip, sheet	0.000299	0.000123
(iii) Acid regeneration:		
(A) fume scrubbers	[2]0.187	[2]0.0770
(iv) Alkaline cleaning:		
(A) pipe, tube	0.0000260	0.0000107
(B) strip, sheet	0.000455	0.000187
(v) Cold forming:		
(A) direct application-single stand	0.00000390	0.00000160
(B) direct application-multiple stands	0.000357	0.000147
(C) recirculation-single stand	0.00000130	0.000000535
(D) recirculation-multiple stands	0.0000325	0.0000134
(E) combination-multiple stand	0.000186	0.0000765
(vi) Continuous annealing lines	0.0000260	0.0000107
(vii) Electroplating:		
(A) plate	0.0000455	0.0000187
(B) strip, sheet: tin, chromium	0.00143	0.000588
(C) strip, sheet: zinc, other metals	0.000715	0.000294
(viii) Hot coating:		
(A) galvanizing, terne and other metals	0.000715	0.000294
(ix) Wet air pollution control devices:		
(A) fume scrubbers	[2]0.0281	[2]0.0116

[1] Pounds per ton of product for all operations except fume scrubbers.
[2] The values are expressed in pounds per day for this operation.

Subpart G—Other Operations Subcategory

§ 420.70 Applicability.

The provisions of this subpart are applicable to discharges and the introduction of pollutants into publicly owned treatment works resulting from production of direct-reduced iron and forging operations.

§ 420.71 Subcategory definitions.

As used in this subpart:

(a) *Product* means:

(1) Direct-reduced iron, including any undersize product;

(2) Direct-reduced iron after forging operations, but prior to any further shaping or finishing operations; and

(3) Direct-reduced iron briquetted, including any undersized product. The average daily operating (production) rate must be determined as specified in § 420.3.

(b) *Briquetting operations* means a hot or cold process that agglomerates (presses together) iron-bearing materials into small lumps without melting or fusion. Used as a concentrated iron ore substitute for scrap in electric furnaces.

(c) *Direct-reduced iron* means iron produced by reduction of iron ore (pellets or briquettes) using gaseous (carbon monoxide-carbon dioxide, hydrogen) or solid reactants.

(d) *ging* means the hot-working of heated steel shapes (*e.g.*, ingots, blooms, billets, slabs) using hydraulic presses.

§ 420.72 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve, for each applicable segment, the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) *Direct-reduced iron.* This table is Effluent Limitations (BPT) for direct-reduced iron:

EFFLUENT LIMITATIONS (BPT)

Pollutant	Maximum daily [1]	Maximum monthly avg. [1]
TSS	0.0200	0.00929

[1] Pounds per ton of product.

(b) *ging operations.* This table is Effluent Limitations (BPT) for forging operations:

EFFLUENT LIMITATIONS (BPT)

Pollutant	Maximum daily [1]	Maximum monthly avg. [1]
Oil and grease	0.0149	0.00889
TSS	0.0235	0.0118

[1] Pounds per ton of product.

(c) *Briquetting.* There shall be no discharge of process wastewater pollutants.

§ 420.73 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best control technology for conventional pollutants (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best control technology for conventional pollutants (BCT): The limitations shall be the same as those specified for conventional pollutants (which are defined in 40 CFR 401.16) in § 420.72 of this subpart for the best practicable control technology currently available (BPT).

§ 420.74 Effluent limitations attainable by the application of the best available control technology economically achievable (BAT).

(a) *Direct-reduced iron; forging operations.* (Reserved)

(b) *Briquetting.* Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available control technology economically achievable (BAT): There shall be no discharge of process wastewater pollutants.

§ 420.75 New Source Performance Standards (NSPS).

New sources subject to this subpart must achieve the following new source performance standards (NSPS), as applicable.

(a) *Direct-reduced iron.* This table is Performance Standards (NSPS) for direct-reduced iron:

PERFORMANCE STANCARDS (NSPS)

Pollutant	Maximum daily [1]	Maximum monthly avg. [1]
TSS	0.0200	0.00929

[1] Pounds per ton of product.

(b) *ging operations.* This table is for Performance Standards (NSPS):

PERFORMANCE STANCARDS (NSPS)

Pollutant	Maximum daily [1]	Maximum monthly avg. [1]
Oil and grease	0.0149	0.00889
TSS	0.0235	0.0118

[1] Pounds per ton of product.

(c) *Briquetting.* There shall be no discharge of process wastewater pollutants.

§ 420.76 Pretreatment Standards for Existing Sources (PSES).

Except as provided in 40 CFR 403.7, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for existing sources (PSES):

(a) *Direct-reduced iron; forging operations.* (Reserved)

(b) *Briquetting.* There shall be no discharge of process wastewater pollutants to POTWs.

§ 420.77 Pretreatment Standards for New Sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for new sources (PSNS):

(a) *Direct-reduced iron; forging operations.* (Reserved)

(b) *Briquetting.* There shall be no discharge of process wastewater pollutants to POTWs.

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Prudency Determinations for Eight Plant Species From the Hawaiian Islands, and Proposed Critical Habitat Designations for Eighteen Plant Species From the Island of Lanai, Hawaii; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH10

Endangered and Threatened Wildlife and Plants; Prudency Determinations for Eight Plant Species From the Hawaiian Islands, and Proposed Critical Habitat Designations for Eighteen Plant Species From the Island of Lanai, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and notice of prudency determination.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have reconsidered our findings concerning whether designating critical habitat for eight federally protected plants from the island of Lanai would be prudent. Some of these plant species may also occur on other Hawaiian Islands. The eight plants were listed as endangered species under the Endangered Species Act of 1973, as amended (Act), between 1991 and 1996. At the time each plant was listed, we determined that designation of critical habitat was not prudent because it would increase the degree of threat to the species and/or would not benefit the plant.

We propose that critical habitat is prudent for seven of these species (*Abutilon eremitopetalum, Cyanea macrostegia* ssp. *gibsonii, Gahnia lanaiensis, Hedyotis mannii, Portulaca sclerocarpa, Tetramolopium remyi*, and *Viola lanaiensis*) because the potential benefits of designating critical habitat essential for the conservation of these species outweigh the risks that may result from human activity due to critical habitat designation. Therefore, we are proposing the designation of critical habitat for these seven species. We propose that designation of critical habitat is not prudent for one species, *Phyllostegia glabra* var. *lanaiensis*, which is no longer extant in the wild, and for which no genetic material is currently known. Such designation would not be beneficial to this species.

For three additional species from Lanai, *Hedyotis schlechtendahliana* var. *remyi, Labordia tinifolia* var. *lanaiensis*, and *Melicope munroi*, we determined that designation of critical habitat was prudent at the time of their listing as endangered species in 1999. Critical habitat designations for these species are also proposed at this time.

In addition, we proposed that critical habitat was prudent for nine species (*Bonamia menziesii, Centarium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyrtandra munroi, Hibiscus brackenridgei, Spermolepis hawaiiensis*, and *Vigna o-wahuensis*) from Lanai that also occur on Kauai, Niihau, Maui, and/or Kahoolawe in proposed rules published earlier in 2000. Critical habitat designations for these species on Lanai are proposed at this time, with the exception of *Vigna o-wahuensis* for which we do not currently know the specific location of this species on Lanai.

We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the proposed designations. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We must receive comments from all interested parties by February 26, 2001. Public hearing requests must be received by February 12, 2001.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, Hawaii 96850–0001.

You may send comments by electronic mail (e-mail) to lani_crithab_pr@fws.gov. Please submit comments in ASCII file format and avoid the use of special characters and encryption. Please include "Attn: 1018–AH10" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Pacific Islands Office at phone number 808/541–3441. Please note that the e-mail address (lani_crithab_pr@fws.gov) will be closed at the termination of the public comment period.

You may hand-deliver written comments to our Pacific Islands Office at 300 Ala Moana Blvd., Room 3–122, Honolulu, Hawaii.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule will be available for public inspection, by appointment, during normal business hours at the Pacific Islands Office.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office (see **ADDRESSES** section) (telephone 808/541–3441; facsimile 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

We have reconsidered our findings concerning whether designating critical habitat for eight federally protected plants from the island of Lanai is prudent. Currently, four of these species (*Abutilon eremitopetalum, Cyanea macrostegia* ssp. *gibsonii, Gahnia lanaiensis*, and *Viola lanaiensis*) are endemic to the island of Lanai, while two species (*Hedyotis mannii* and *Portulaca sclerocarpa*) are known from Lanai, as well as one or more other islands. One species, *Tetramolopium remyi*, was known from Maui and Lanai but is currently only extant on Lanai (Table 1). We believe the eighth species, *Phyllostegia glabra* var. *lanaiensis*, may be extinct.

Proposed prudency determinations for nine species (*Bonamia menziesii, Centarium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyrtandra munroi, Hibiscus brackenridgei, Spermolepis hawaiiensis*, and *Vigna o-wahuensis*) which also occur on the islands of Kauai or Niihau were published in a previous proposal (65 FR 66807); those which also occur on Maui or Kahoolawe are being published in a concurrent proposal.

In addition, for three species (*Hedyotis schlechtendahliana* var. *remyi, Labordia tinifolia* var. *lanaiensis*, and *Melicope munroi*), we determined that designation of critical habitat was prudent at the time of their listing as endangered species in 1999. Proposed critical habitat designations for these species are included in this proposal.

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 37 SPECIES ON LANAI

Species	Island distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	N.W. Isles, Kahoolawe Niihau
Abutilon eremitopetalum (No common name).				C			
Adenophorus periens (pendant kihi fern).	C	H	C	R	R	C	
Bidens micrantha sp. *kalealaha* (ko oko alau).				H	C		
Bonamia menziesii (No common name).	C	C	H	C	C	C	
Brighamia rockii (pua ala) ..			C	H	H		
Cenchrus agrimonioides (No common name).		C		H	C	R	NW Isles (H)
Centaurium sebaeoides (awiwi).	C	C	C	C	C		
Clermontia oblongifolia ssp. *mauiensis* (oha wai).				C	C		
Ctenitis squamigera (pauoa).	H	C	H	C	C	H	
Cyanea grimesiana ssp. *grimesiana* (haha).		C	C	C	C		
Cyanea lobata (haha)				H	C		
Cyanea macrostegia ssp. *gibsonii* (haha).				C			
Cyperus trachysanthos (pu uka a).	C	C	H	H			Ni(C)
Cyrtandra munroi (ha iwale)				C	C		
Diellia erecta (No common name).	H	H	C	H	C	C	
Diplazium molokaiense (No common name).	H	H	H	H	C		
Gahnia lanaiensis (No common name).				C			
Hedyotis mannii (No common name).			C	C	H		
Hedyotis schlechtendahliana var. *remyi* (kopa).				C			
Hesperomannia arborescens (No common name).		C	C	H	C		
Hibiscus brackenridgei (mao hau hele).	H	C	H	C	C	C	Ka(R)
Isodendrion pyrifolium (aupaka).		H	H	H	H	C	Ni(H)
Labordia tinifolia var. *lanaiensis* (kamakahala).				C			
Mariscus faurei (No common name).			C	H		C	
Melicope munroi (alani)			H	C			
Neraudia sericea (No common name).			C	H	C		Ka(H)
Phyllostegia glabra var. *lanaiensis* (ulihi).				H			
Portulaca sclerocarpa (po e).				C		C	
Sesbania tomentosa (ohai)	C	C	C	H	C	C	Ni(H), Ka(C), NW Isles (C)
Silene lanceolata (No common name).	H	C	C	H		C	
Solanum incompletum (popolo ku mai).	H		H	H	H	C	
Spermolepis hawaiiensis (No common name).	C	C	C	C	C	C	
Tetramolopium lepidotum ssp. *lepidotum* (No common name).		C		H			
Tetramolopium remyi (No common name).				C	H		
Vigna o-wahuensis (No common name).		H	C	C	C	C	Ni(H), Ka(C)
Viola lanaiensis (No common name).				C			

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 37 SPECIES ON LANAI—Continued

Species	Island distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	N.W. Isles, *Kahoolawe Niihau*
Zanthoxylum hawaiiense (ae).	C		C	H	C	C	

KEY:
C (Current)—population last observed within the past 30 years.
H (Historical)—population not seen for more than 30 years.
R (Reported)—reported from undocumented observations.

An additional 17 species are known only from historical records (pre-1970) on Lanai or from undocumented observations (Table 1). Proposed prudency determinations and proposed critical habitat designations or non-designations for these species which still occur on other islands have been or will be included in the proposed rules for the islands on which they currently occur (Table 2).

TABLE 2.—LIST OF PROPOSED RULES IN WHICH PRUDENCY DETERMINATIONS AND CRITICAL HABITAT DESIGNATIONS/NON-DESIGNATIONS WERE OR WILL BE PROPOSED FOR 14 SPECIES THAT NO LONGER OCCUR ON LANAI

Species	Proposed rule in which prudency will be proposed	Proposed rule in which critical habitat designations/non designations will be discussed
Brighamia rockii	Molokai	Molokai.
Cenchrus agrimonioides	Maui and Kahoolawe	Maui and Kahoolawe; Oahu.
Cyperus trachysanthos	Kauai and Niihau (65 FR 66807)	Kauai and Niihau (65 FR 66807); Oahu.
Diellia erecta	Maui and Kahoolawe	Maui and Kahoolawe; Molokai; Hawaii; Oahu.
Diplazium molokaiense	Maui and Kahoolawe	Maui and Kahoolawe
Hesperomannia arborescens	Maui and Kahoolawe	Maui and Kahoolawe; Molokai; Oahu.
Isodendrion pyrifolium	Hawaii	Hawaii.
Mariscus faurei	Molokai	Molokai; Hawaii.
Neraudia sericea	Maui and Kahoolawe	Maui and Kahoolawe; Molokai.
Sesbania tomentosa	Kauai and Niihau (65 FR 66807)	Kauai and Niihau (65 FR 66807); Maui and Kahoolawe; Molokai; Northwest Hawaiian Islands; Hawaii; Oahu.
Silene lanceolata	Molokai	Molokai; Hawaii; Oahu.
Solanum incompletum	Hawaii	Hawaii.
Tetramolopium lepidotum ssp. *lepidotum*	Oahu	Oahu
Zanthoxylum hawaiiense	Kauai and Niihau (65 FR 66807)	Kauai and Niihau (65 FR 66807); Maui and Kahoolawe; Molokai; Hawaii.

Critical habitat is proposed for designation within 10 units on the island of Lanai. The land area within these units totals 1,953 hectares (ha) (4,826 acres (ac)). If this proposal is made final, section 7 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) would prohibit destruction or adverse modification of critical habitat through any activity funded, authorized, or carried out by any Federal agency. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat.

The Island of Lanai

Lanai is a small island totaling about 360 square kilometers (sq km) (139 square miles (sq mi) in area. Hidden from the trade winds in the lee or rain shadow of the more massive West Maui Mountains, Lanai was formed from a single shield volcano built by eruptions at its summit and along three rift zones. The principal rift zone runs in a northwesterly direction and forms a broad ridge whose highest point, Lanaihale, has an elevation of 1,027 meters (m) (3,370 feet (ft)) (Department of Geography 1998). The entire ridge is commonly called Lanaihale, after its highest point. Annual rainfall on the summit of Lanaihale is 760–1,015 millimeters (mm) (30–40 inches (in.)), but is considerably less, 250–500 mm (10–20 in.), over much of the rest of the island (Department of Geography 1998).

Geologically, Lanai is part of the four island complex comprising Maui, Molokai, Lanai, and Kahoolawe, known collectively as Maui Nui (Greater Maui). During the last Ice Age about 12,000 years ago when sea levels were about 160 m (525 ft) less than their present level, these four islands were connected by a broad lowland plain (Department of Geography 1998). This land bridge allowed the movement and interaction of each island's flora and fauna and contributed to the present close relationships of their biota.

Changes in Lanai's ecosystem began with the arrival of the first Polynesians about 1500 years ago. In the 1800s, goats (*Capra hircus*) and sheep (*Ovis aries*) were first introduced to the island. Native vegetation was soon decimated by these non-native ungulates, and erosional processes from wind and rain caused further damage to the native forests (Hobdy 1993). Formal ranching was begun in 1902, and by 1910, the Territory forester helped to revegetate the island. By 1911, a ranch manager from New Zealand, George Munro, instituted a forest management practice to recover the native forests and bird species which included fencing and eradication of sheep and goats from the mountains. By the 1920s, Castle and Cooke had acquired more than 98 percent of the island and established a 6,500 ha (16,000 ac) pineapple plantation surrounding its company town, Lanai City. In the early 1990s, the pineapple plantation closed, and luxury hotels were developed by the private landowner, sustaining the island's economy today.

Discussion of the 19 Plant Taxa

Species Endemic to Lanai

Abutilon eremitopetalum

Abutilon eremitopetalum is a long-lived shrub in the mallow family (Malvaceae) with grayish-green, densely hairy, heart-shaped leaves. It is the only *Abutilon* on Lanai whose flowers have green petals hidden within the calyx (the outside leaflike part of the flower) (Bates 1999).

Little is known about the life history of *Abutilon eremitopetalum*. It apparently flowers during the wet season (*e.g.* February) (Service 1995). Pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Abutilon eremitopetalum* was found in small, widely scattered colonies at elevations of between 215 and 305 meters (m) (700 and 1,000 ft) in the ahupuaa (geographical areas) of Kalulu, Mahana, Maunalei, Mamaki, and Paawili on the northern, northeastern, and eastern parts of Lanai Island (Caum 1933; Hawaii Natural Heritage Program (HINHP) Database 2000; Service 1995). Currently, about seven individuals are known from a single population in Kahea Gulch on the northeastern part of the island (Geographic Decision Systems International (GDSI) 2000; HINHP Database 2000).

Abutilon eremitopetalum is found in lowland dry forest. The only known population is found at an elevation of 335 m (1,100 ft) on a moderately steep north-facing slope on red sandy soil and rock. Historically, *A. eremitopetalum* has been reported from elevations of 210–521 m (690–1,710 ft). *Erythrina sandwicensis* (wili wili) and *Diospyros ferrea* (lama) are the dominant trees in open forest of the area. Other associated native taxa include *Canthium odoratum* (ohee), *Dodonaea viscosa* (aalii), *Nesoluma polynesicum* (keahi), *Rauvolfia sandwicensis* (hao), *Sida fallax* (ilima), and *Wikstroemia* sp. (akia) (Service 1995; HINHP Database 2000).

The threats to *Abutilon eremitopetalum* are habitat degradation and competition by encroaching exotic plant species such as *Lantana camara* (lantana), *Leucaena leucocephala* (koa haole), and *Pluchea carolinensis* (sourbush); browsing by axis deer (*Axis axis*); soil erosion caused by feral ungulate grazing on grasses and forbs; and the small number of extant individuals, as the limited gene pool may depress reproductive vigor, or a single natural or man-caused environmental disturbance could destroy the only known existing population. Fire is another potential threat because the area is dry much of the year (HINHP Database 2000; 56 FR 47686; Service 1995).

Cyanea macrostegia ssp. *gibsonii*

Cyanea macrostegia ssp. *gibsonii*, a long-lived perennial and a member of the bellflower family (Campanulaceae), is a palm-like tree 1 to 7 m (3 to 23 ft) tall with elliptic or oblong leaves that have fine hairs covering the lower surface. The following combination of characters separates this taxon from the other members of the genus on Lanai: calyx lobes are oblong, narrowly oblong, or ovate in shape; and the calyx and corolla (petals of a flower) both more than 0.5 centimeters (cm) (0.2 in.) wide (Lammers 1999; 56 FR 47686).

Cyanea macrostegia ssp. *gibsonii* was seen flowering in the month of July; however, details of its flowering period are unknown. Pollination vectors, seed dispersal agents, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown (Service 1995).

Cyanea macrostegia ssp. *gibsonii* historically is documented from the summit of Lanaihale and the upper parts of Mahana, Kaiholena, and Maunalei Valleys of Lanai (Lammers 1999; 56 FR 47686). There are a total of seven populations containing 74 individuals (HINHP Database 2000). Presently, this taxon is known from Lanaihale, Kaiholena, between Kunoa and Waialala Gulches, Waialala Gulch, Kunoa Gulch, south of Kahinahina Ridge, and at the head of Hauola Gulch (GDSI 2000; HINHP Database 2000).

The habitat of *Cyanea macrostegia* ssp. *gibsonii* is lowland wet *Metrosideros polymorpha* (ohia) forest or *Diplopterygium pinnatum* (uluhe lau nui)—*M. polymorpha* shrubland between elevations of 760–970 m (2,490–3,180 ft). It has been observed to grow on flat to moderate or steep slopes, usually on lower gulch slopes or gulch bottoms, often at edges of streambanks, probably due to vulnerability to ungulate damage at more accessible locations. Sites are sunny to shady, mesic to wet with clay or other soil substrate. Associated vegetation includes *Dicranopteris linearis* (uluhe), *Perrottetia sandwicensis* (olomea), *Scaevola chamissoniana* (naupaka kuahiwi), Pipturus sp. (mamake), *Antidesma* sp. (hame), *Freycinetia arborea* (ieie), *Psychotria* sp. (kopiko), *Cyrtandra* sp. (ha iwale), *Broussaisia arguta* (kanawao), *Cheirodendron* sp. (olapa), *Clermontia* sp. (oha wai), *Dubautia* sp. (na ena e), *Hedyotis* sp. (No Common Name), Ilex *anomala* (aiea), *Labordia* sp. (kamakahala), *Melicope* sp. (alani), *Pneumatopteris* sp. (No common name), and *Sadleria* sp. (ama u) (Service 1995; HINHP Database 2000).

The threats to *Cyanea macrostegia* ssp. *gibsonii* are browsing by deer; competition with the alien plant *Hedychium gardnerianum* (kahili ginger); and the small number of extant individuals, as the limited gene pool may depress reproductive vigor, or any natural or man-caused environmental disturbance could destroy the existing populations (HINHP Database 2000; Service 1995; 56 FR 47686).

Gahnia lanaiensis

Gahnia lanaiensis, a short-lived perennial and a member of the sedge family (Cyperaceae), is a tall (1.5 to 3 m (5 to 10 ft)), tufted, grass-like plant. This sedge may be distinguished from grasses and other genera of sedges on Lanai by its spirally arranged flowers, its solid stems, and its numerous, three-ranked leaves. *Gahnia lanaiensis* differs from the other members of the genus on the island by its achenes (seed-like fruits), which are 0.36 to 0.46 cm (0.14 to 0.18 in.) long and purplish-black when mature (Koyama 1999).

July has been described as the "end of the flowering season" for *Gahnia lanaiensis* (Degener *et al.* 1964). Plants of this species have been observed with fruit in October (56 FR 47686). Pollination vectors, seed dispersal agents, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown.

Gahnia lanaiensis is known from a total of three populations containing 47 individuals along the summit of Lanaihale, in the Haalelepaakai area and on the eastern edge of Hauola Gulch (HINHP Database 2000). The populations are found between 915 and 1,030 m (3,000 and 3,380 ft) in elevation (GDSI 2000; HINHP Database 2000). This distribution encompasses the entire known historic range of the species.

The habitat of *Gahnia lanaiensis* is lowland wet forest (shrubby rainforest to open scrubby fog belt or degraded lowland mesic forest), wet *Diplopterygium pinnatum-Dicranopteris linearis-Metrosideros polymorpha* shrubland, or wet *Metrosideros polymorpha-Dicranopteris linearis* shrubland. It occurs on flat to gentle ridgecrest topography in moist to wet clay or other soil substrate in open areas or in moderate shade. Associated species include native mat ferns, *Doodia* sp. (okupukupu lau ii), *Odontosoria chinensis* (pala a), *Ilex anomala*,

Hedyotis terminalis (manono), *Sadleria* sp., *Coprosma* sp. (pilo), *Lycopodium* sp. (wawae iole), *Scaevola* sp. (naupaka), and *Styphelia tameiameiae* (pukiawe) (Service 1995).

The primary threat to this species is the small number of plants and their restricted distribution, which increases the potential for extinction from naturally occurring events. In addition, *Gahnia lanaiensis* is threatened by the planned development of the island; disturbance of the soil or destruction of groundcover plants which would increase the potential for erosion and open areas to invading non-native plants; and *Leptospermum scoparium* (manuka), a weedy tree introduced from New Zealand which is spreading along Lanaihale, but has not yet reached the area where *Gahnia* is found (Service 1995; HINHP Database 2000).

Hedyotis schlechtendahliana var. *remyi*

Hedyotis schlechtendahliana var. *remyi*, a short-lived perennial and a member of the coffee family (Rubiaceae), is a few branched subshrub from 60 to 600 cm (24 to 240 in.) long, with weakly erect or climbing stems that may be somewhat square, smooth, and glaucous (with a fine waxy coating that imparts a whitish or bluish hue to the stem). The species is distinguished from others in the genus by the distance between leaves and the length of the sprawling or climbing stems, and the variety *remyi* is distinguished from *Hedyotis schlechtendahliana* var. *schlechtendahliana* by the leaf shape, presence of narrow flowering stalks, and flower color (Wagner *et al.* 1999).

Pollination vectors, seed dispersal agents, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown for *Hedyotis schlechtendahliana* var. *remyi*.

Historically, *Hedyotis schlechtendahliana* var. *remyi* was known from five locations on the northwestern portion of Lanaihale (HINHP Database 2000; Wagner *et al.* 1999; 64 FR 48307). Currently, this species is known from eight individuals in three populations on Kaiholeha-Hulupoe Ridge, Kapohaku drainage, and Waiapaa drainage on Lanaihale (GDSI 2000; HINHP Database 2000).

Hedyotis schlechtendahliana var. *remyi* typically grows on or near ridge crests in mesic windswept shrubland with a mixture of dominant plant taxa that may include *Metrosideros polymorpha*, *Dicranopteris linearis*, or *Styphelia tameiameiae* at elevations between 732 and 914 m (2,400 to 3,000 ft). Associated plant taxa include *Dodonaea viscosa*, *Odontosoria chinensis*, *Sadleria* sp., *Dubautia* sp., and *Myrsine* sp. (kolea) (HINHP Database 2000; 64 FR 48307).

The primary threats to *Hedyotis schlechtendahliana* var. *remyi* are habitat degradation and destruction by axis deer; competition with alien plant taxa such as *Psidium cattleianum* (strawberry guava), *Myrica faya* (firetree), *Leptospermum scoparium*, and *Schinus terebinthifolius* (christmasberry); and random environmental events or reduced reproductive vigor due to the small number of remaining individuals and populations (HINHP Database 2000; 64 FR 48307).

Labordia tinifolia var. *lanaiensis*

Labordia tinifolia var. *lanaiensis*, a short lived perennial in the logan family (Loganiaceae), is an erect shrub or small tree 1.2 to 15 m (4 to 49 ft) tall. The stems branch regularly into two forks of nearly equal size. This subspecies differs from the other taxa in this endemic Hawaiian genus by having larger capsules and smaller corollas (Wagner *et al.* 1999). Flowering time, pollination vectors, seed dispersal agents, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown.

Labordia tinifolia var. *lanaiensis* was historically known from the entire length of the summit ridge of Lanaihale (HINHP Database 2000). Currently, *L. t.* var. *lanaiensis* is known from only three populations at the southeastern end of the summit ridge of Lanaihale (HINHP Database 2000). These populations total 300 to 800 scattered individuals (GDSI 2000).

The typical habitat of *Labordia tinifolia* var. *lanaiensis* is lowland mesic forest associated with the native species *Dicranopteris linearis* and *Scaevola chamissoniana*, at elevations between 710 and 1,020 m (2,330 and 3,345 ft) (HINHP Database 2000; 64 FR 48307).

Labordia tinifolia var. *lanaiensis* is threatened by axis deer and several alien plant taxa. The species is also threatened by random environmental factors because of the small number of populations (64 FR 48307).

Viola lanaiensis

Viola lanaiensis, a short-lived perennial of the violet family (Violaceae), is a small, erect, unbranched or little branched subshrub. The leaves, which are clustered toward the upper part of the stem, are lance-shaped with a pair of narrow, membranous stipules (leaf-like appendages arising from the base of a leaf) below each leaf axis. The flowers are small, white with purple tinged or with purple veins, and occur singly or up to four per upper leaf axil. The fruit is a capsule, about 1.0 to 1.3 cm (0.4 to 0.5 in) long (Wagner *et al.* 1999). It is the only member of the genus on Lanai. Flowering time, pollination vectors, seed dispersal agents, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown.

Viola lanaiensis was known historically from scattered sites on the summit, ridges, and upper slopes of Lanaihale (from near the head of Kaiolena and Hookio Gulches to the vicinity of Haalelepaakai, a distance of about 4 km (2.5 mi), at elevations of approximately 850–975 m (2,790–3,200 ft). An occurrence of *V. lanaiensis* was known in the late 1970s along the summit road near the head of Waialala Gulch where a population of approximately 20 individuals flourished. That population has since disappeared due to habitat disturbance. Five populations are currently known from southern Lanai: in Kunoa Gulch; between Kunoa and Waialala Gulches; in the upper end of the northernmost drainage of Awehi Gulch; in Hauola Gulch, and along Hauola Trail. It is estimated that the populations total less than 500 plants (GDSI 2000; HINHP Database 2000).

The habitat of *Viola lanaiensis* is *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest or lowland mesic shrubland. It has been observed on moderate to steep slopes from lower gulches to ridgetops, from 670–975 m (2,200–3,200 ft) elevation, with a soil and decomposed rock substrate in open to shaded areas. It was once observed growing from crevices in drier soil on a mostly open rock area near a recent landslide. Associated vegetation includes ferns and short windswept shrubs or other diverse mesic community members such as *Scaevola chamissoniana*, *Hedyotis terminalis*, *Hedyotis centranthoides* (No common name), *Styphelia tameiameiae*, *Carex* sp. (No common name), *Ilex anomala*, *Psychotria* sp., *Antidesma* sp., *Coprosma* sp., *Freycinetia arborea*, *Myrsine* sp., *Nestegis* sp. (olopua), *Psychotria* sp., and *Xylosma* sp. (maua) (Service 1995; 56 FR 47686).

The main threats to *Viola lanaiensis* include browsing and habitat disturbance by axis deer; encroaching alien plant species such as *Leptospermum* sp. (No common name); depressed reproductive vigor due to a limited local gene pool; the probable loss of appropriate pollinators; and slugs (Service 1995; 56 FR 47686).

Multi-Island Species

Bonamia menziesii

Bonamia menziesii, a short-lived perennial and a member of the morning-glory family (Convolvulaceae), is a vine with twining branches that are fuzzy when young. This species is the only member of the genus that is endemic to the Hawaiian Islands and differs from other genera in the family by its two styles, longer stems and petioles (a stalk that supports a leaf), and rounder leaves (Austin 1999). Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Bonamia menziesii* was known from Kauai, Oahu, Molokai, West Maui, and Hawaii (HINHP Database 2000). Currently, this species is known from Kauai, Oahu, Maui, Hawaii, and Lanai. On Lanai, the three populations, containing a total of 14 individual plants, are found in the Ahakea and Kanepuu Units of Kanepuu Preserve, and on Puhielelu Ridge (GDSI 2000; HINHP Database 2000).

Bonamia menziesii is found in dry *Nestegis sandwicensis-Diospyros* sp. (lama) forest and dry *Dodonea viscosa* shrubland at elevations between 150 and 855 m (490 and 2,800 ft) (Austin 1999; 59 FR 56333). Associated species include *Bobea* sp. (ahakea), *Nesoluma polynesicum*, *Erythrina sandwicensis*, *Rauvolfia sandwicensis*, *Metrosideros polymorpha*, *Canthium odoratum*, *Dienella sandwicensis* (uki uki), *Diospyros sandwicensis* (lama), *Hedyotis terminalis*, *Melicope* sp. (alani), *Myoporum sandwicense* (naio), *Nestegis sandwicense*, *Pisonia* sp. (papalakepau), *Pittosporum* sp. (hoawa), *Pouteria sandwicensis* (alaa), and *Sapindus oahuensis* (lonomea) (HINHP Database 2000; 59 FR 56333).

The primary threats to this species on Lanai are habitat degradation and possible predation by feral pigs *(Sus scrofa)*, goats, axis deer, black-tailed deer *(Odocoileus hemionus columbianus)*, and cattle *(Bos taurus)*; competition with a variety of alien plant species such as *Lantana camara*, *Leucaena leucocephala* and *Schinus terebinthifolius*; and an alien beetle *(Physomerus grossipes)* (Service 1999; 59 FR 56333).

Centaurium sebaeoides

Centaurium sebaeoides, a member of the gentian family (Gentianaceae), is an annual herb with fleshy leaves and stalkless flowers. This species is distinguished from *Centaurium erythraea*, which is naturalized in Hawaii, by its fleshy leaves and the unbranched arrangement of the flower cluster (56 FR 55770; Wagner *et al.* 1999).

Centaurium sebaeoides has been observed flowering in April. Flowering may be induced by heavy rainfall. Populations are found in dry areas, and plants are more likely to be found following heavy rains (Service 1999).

Historically and currently, *Centaurium sebaeoides* is known from Kauai, Oahu, Molokai, Lanai, and Maui (Wagner *et al.* 1999). On Lanai, there is one population containing between 20 and 30 individual plants in Maunalei Valley (HINHP Database 2000). This species is found on dry ledges around 210 m (690 ft) elevation. Associated species include *Hibiscus brackenridgei* (HINHP Database 2000).

The major threats to this species on Lanai are competition from alien plant species (HINHP Database 2000).

Clermontia oblongifolia ssp. *mauiensis*

Clermontia oblongifolia ssp. *mauiensis*, a short-lived perennial and a member of the bellflower family (Campanulaceae), a shrub or tree with oblong to lance-shaped leaves on leaf stalks (petioles). *Clermontia oblongifolia* is distinguished from other members of the genus by its calyx and corolla, which are similar in color and are each fused into a curved tube that falls off as the flower ages. The species is also distinguished by the leaf shape, the male floral parts, the shape of the flower buds, and the lengths of the leaf and flower stalks, the flower, and the smooth green basal portion of the flower (the hypanthium) (Lammers 1988, 1999; 57 FR 20772). *Clermontia oblongifolia* ssp. *mauiensis* is reported from Maui and Lanai, while *C. o.* ssp. *oblongifolia* is only known from Oahu, and *C. o.* ssp. *brevipes* is only known from Molokai.

Clermontia oblongifolia ssp. *mauiensis* is known to flower from November to July (Rock 1919). Little is known regarding pollination vectors, seed dispersal, or other factors.

Historically and currently, *Clermontia oblongifolia* ssp. *mauiensis* is known from Lanai and Maui (Lammers 1999; 57 FR 20772). On Lanai, an unknown number of individuals are reported from Kaiholena Gulch (HINHP Database 2000).

This plant typically grows on the sides of ridges in *Metrosideros polymorpha* dominated lowland wet forest at elevations between 800–900 m (2,625–2,950 ft). Associated native species include *Coprosma* sp., *Clermontia* sp., *Hedyotis* sp., and *Melicope* sp. (HINHP Database 2000).

The threats to this species on Lanai are the small number of populations and individuals which make it vulnerable to extinction from a single natural or human-caused environmental disturbance; depressed reproductive vigor; and habitat degradation by feral pigs (57 FR 20772; Service 1997).

Ctenitis squamigera

Ctenitis squamigera, a short-lived perennial and a member of the wood fern family (Dryopteridaceae) (Wagner and Wagner 1992). It has a rhizome (horizontal stem), creeping above the ground and densely covered with scales similar to those on the lower part of the leaf stalk. It can be readily distinguished from other Hawaiian species of *Ctenitis* by the dense covering of tan-colored scales on its frond (Wagner and Wagner 1992). Reproductive cycles, longevity, specific environmental requirements and limiting factors are unknown.

Historically, *Ctenitis squamigera* was recorded from Kauai, Oahu, Molokai, Maui, Lanai, and the island of Hawaii (HINHP Database 2000). Currently, it is found on Oahu, Lanai, West Maui, and Molokai (HINHP Database 2000; 59 FR 49025). There are three populations totaling 42 individual plants on Lanai in the Waiapaa-Kapohaku area on the leeward side of the island, Lopa Gulch, and Waiopa Gulch on the windward side (GDSI 2000; HINHP Database 2000).

This species is found in the forest understory at elevations of 380 to 917 m (1,250 to 3,010 ft) in diverse mesic forest and scrubby mixed mesic forest (HINHP Database 2000). Associated native plant taxa include *Nestegis sandwicensis*, *Coprosma* sp., *Sadleria* sp., *Selaginella* sp. (lepelepe a moa), *Carex meyenii* (No common name), *Blechnum occidentale* (No common name), *Pipturus* sp., *Melicope* sp., *Pneumatopteris sandwicensis* (No common name), *Pittosporum* sp., *Alyxia oliviformis* (maile), *Freycinetia arborea*, *Antidesma* sp., *Cyrtandra* sp., *Peperomia* sp. (ala ala wai nui), *Myrsine* sp., *Psychotria* sp., *Metrosideros polymorpha*, *Syzygium sandwicensis* (ohia ha), *Wikstroemia* sp., *Microlepia* sp. (No common name), *Doodia* sp., *Boehmeria grandis* (akolea), *Nephrolepis* sp. (kupukupu), *Perrotettia sandwicensis*, and *Xylosma* sp. (HINHP 2000, 59 FR 49025).

The primary threats to this species on Lanai are habitat degradation by feral pigs, goats, and axis deer; competition with alien plant taxa, especially *Psidium cattleianum* and *Schinus terebinthifolius*; fire; decreased reproductive vigor and extinction from naturally occurring events due to the small number of existing populations and individuals (Service 1998; Culliney 1988; HINHP Database 2000; 59 FR 49025).

Cyanea grimesiana ssp. *grimesiana*

Cyanea grimesiana ssp. *grimesiana*, a short-lived perennial and a member of the bellflower family (Campanulaceae), is a shrub with pinnately divided leaves. This species is distinguished from others in this endemic Hawaiian genus by the pinnately lobed leaf margins and the width of the leaf blades. This subspecies is distinguished from the other two subspecies by the shape and size of the calyx lobes which overlap at the base (Lammers 1999).

Little is known about the life history of this plant. On Molokai, flowering plants have been reported in July and August. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown.

Historically and currently, *Cyanea grimesiana* ssp. *grimesiana* is known from Oahu, Molokai, Lanai, and Maui (61 FR 53108; Service 1999). Currently, on Lanai there are two populations with at least three individuals in Kaiholena Gulch and Waiakeakua Gulch (HINHP Database 2000).

This species is typically found in mesic forest often dominated by *Metrosideros polymorpha* or *M. polymorpha* and *Acacia koa* (koa), or on rocky or steep slopes of stream banks, at elevations between 350 and 945 m (1,150 and 3,100 ft). Associated plants include *Antidesma* sp., *Bobea* sp., *Myrsine* sp., *Nestegis sandwicensis*, *Psychotria* sp., and *Xylosma* sp. (61 FR 53108; Service 1999).

The threats to this species on Lanai are habitat degradation and/or destruction caused by feral axis deer, goats, and pigs; competition with various alien plants; randomly naturally occurring events causing extinction due to the small number of existing individuals; fire; landslides; rats *(Rattus rattus)*; and various slugs (59 FR 53108; Service 1999).

Cyrtandra munroi

Cyrtandra munroi, a short-lived perennial and a member of the African violet family (Gesneriaceae). It is a shrub with opposite, elliptic to almost circular leaves which are sparsely to moderately hairy on the upper surface and covered with velvety, rust-colored hairs underneath. This species is distinguished from other species of the genus by the broad opposite leaves, the length of the flower cluster stalks, the size of the flowers, and the amount of hair on various parts of the plant (Wagner *et al.* 1999).

Some work has been done on the reproductive biology of some species of *Cyrtandra* (Service 1995), but not on *C. munroi* specifically. Studies indicate that a specific pollinator may be necessary for successful pollination. Seed dispersal may be via birds which eat the fruits (Service 1995). Flowering time, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown.

Historically and currently, *Cyrtandra munroi* is known from Lanai and Maui (HINHP Database 2000; Wagner *et al.* 1999). Currently, on Lanai there are a total of two populations containing 17 individuals in the Kapohaku/Waiapaa area, and the gulch between Kunoa and Waialala gulches (GDSI 2000; HINHP Database 2000).

The habitat of this species is diverse mesic forest, wet *Metrosideros polymorpha* forest, and mixed mesic *M. polymorpha* forest, typically on rich, moist to wet, moderately steep talus slopes from 300 to 920 m (980–3,020 ft). It occurs on soil and rock substrates on slopes from watercourses in gulch bottoms and up the sides of gulch slopes to near ridgetops. Associated native species include, *Diplopterygium pinnatum*, *Diospyros* sp., *Hedyotis acuminata* (au), *Clermontia* sp., *Alyxia oliviformis*, *Bobea* sp., *Coprosma* sp., *Dicranopteris linearis*, *Freycinetia arborea*, *Melicope* sp., *Myrsine* sp., *Perrottetia sandwicensis*, *Pipturus* sp., *Pittosporum* sp., *Pleomele* sp. (hala pepe), *Pouteria sandwicensis*, *Psychotria* sp., *Sadleria* sp., *Scaevola* sp., *Xylosma* sp., and other *Cyrtandra* spp. (HINHP Database 2000; Service 1995).

The threats to this species on Lanai are browsing and habitat disturbance by axis deer; competition with the alien plant species *Psidium cattleianum*, *Myrica faya*, *Leptospermum scoparium*, *Pluchea symphytifolia* (sourbush), *Melinis minutiflora* (molasses grass), *Rubus rosifolius* (thimbleberry), and *Paspalum conjugatum* (Hilo grass); a very small number of extant individuals which can cause depressed reproductive vigor; and loss of appropriate pollinators (Service 1995; 57 FR 20772).

Hedyotis mannii

Hedyotis mannii, a short-lived perennial and a member of the coffee family (Rubiaceae). It is a perennial plant with smooth, usually erect stems 30 to 60 cm (1 to 2 ft) long which are woody at the base and four-angled or -winged. This species' growth habit; its quadrangular or winged stems; the shape, size, and texture of its leaves; and its dry capsule which opens when mature separate it from other species of the genus (Wagner *et al.* 1999).

Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a).

Hedyotis mannii was once widely scattered on Lanai, West Maui, and Molokai (HINHP Database 2000). After a hiatus of 50 years, this species was rediscovered in 1987 by Steve Perlman on Molokai (HINHP Database 2000; Service 1996a). In addition, two populations, now numbering between 35 and 40 individual plants, were discovered on Lanai in 1991 in Maunalei and Hauola gulches (GDSI 2000; HINHP Database 2000; Service 1996a).

Hedyotis mannii typically grows on dark, narrow, rocky gulch walls and on steep stream banks in wet forests at 150 to 1,050 m (490 to 3,450 ft) in elevation (HINHP Database 2000; Service 1996a). Associated plant species include *Sadleria* sp., *Selaginella* sp., *Broussaisia arguta*, *Labordia* sp., *Cyrtandra* sp., *Scaevola* sp., *Freycinetia arborea*, *Blechnum occidentale*, *Pipturis* sp., *Carex meyenii*, *Pneumatopteris sandwicensis*, *Cibotium* sp. (hapuu), *Cyanea* sp. (haha), and *Psychotria* sp. (HINHP Database 2000).

The limited number of individuals of *Hedyotis mannii* makes it extremely vulnerable to extinction from random environmental events. Feral pigs and alien plants such as *Melinis minutiflora*, *Psidium cattleianum*, and *Rubus rosifolius* degrade the habitat of this species and contribute to its vulnerability (57 FR 46325).

Hibiscus brackenridgei

Hibiscus brackenridgei, a short-lived perennial and a member of the mallow family (Malvaceae), is a sprawling to erect shrub or small tree. This species differs from other members of the genus in having the following combination of characteristics: Yellow petals, a calyx consisting of triangular lobes with raised veins and a single midrib, bracts attached below the calyx, and thin stipules that fall off, leaving an elliptic scar. Two subspecies are currently recognized, *H. brackenridgei* ssp. *brackenridgei* and *H. brackenridgei* ssp. *mokuleianus* (Bates 1999).

Hibiscus brackenridgei is known to flower continuously from early February through late May, and intermittently at other times of year. Intermittent flowering may possibly be tied to day length (Service 1999). Little else is known about the life history of this plant. Pollination biology, longevity, specific environmental requirements, and limiting factors are unknown.

Historically, *Hibiscus brackenridgei* was known from Kauai, Oahu, Lanai, Maui, Molokai, and Hawaii (HINHP Database 2000; Service 1999). *Hibiscus*

brackenridgei was collected from an undocumented site on Kahoolawe though the subspecies has never been determined (Service 1999). Currently, *H. b.* ssp. *mokuleianus* is known from Oahu and from undocumented observations on Kauai (Bates 1999; Service 1999). *Hibiscus brackenridgei* ssp. *brackenridgei* is currently known from Lanai, Maui, and Hawaii. On Lanai, there are a total of three populations containing an unknown number of individuals, one population is known from Keamuku Road, one from a fenced area on the dry plains of Kaena Point, and a population that was initially outplanted and now appears to be reproducing naturally in Kanepuu Preserve (GDSI 2000; HINHP Database 2000; Wesley Wong, Jr., formerly of Hawaii Division of Forestry and Wildlife (DOFAW), *in litt.* 1998).

Hibiscus brackenridgei ssp. *brackenridgei* occurs in lowland dry to mesic forest and shrubland from sea level to 800 m (2,625 ft) in elevation (Bates 1999; HINHP Database 2000). Associated plant species include *Dodonea viscosa, Canthium odoratum, Eurya sandwicensis* (anini), *Isachne distichophylla* (ohe), and *Sida fallax* (HINHP Database 2000).

The primary threats to *Hibiscus brackenridgei* ssp. *brackenridgei* on Lanai are habitat degradation; possible predation by pigs, goats, mouflon sheep (*Ovis musimon*), cattle, axis deer, and rats; competition with alien plant species; road construction; fire; and susceptibility to extinction caused by naturally occurring events or reduced reproductive vigor (59 FR 56333).

Melicope munroi

Melicope munroi, a long lived perennial of the citrus family (Rutaceae), is a sprawling shrub up to 3 m (10 ft) tall. The new growth of this species is minutely hairy. This species differs from other Hawaiian members of the genus in the shape of the leaf and the length of the inflorescence (a flower cluster) stalk (Stone et al. 1999). Flowering time, pollination vectors, seed dispersal agents, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown.

Historically, this species was known from the Lanaihale summit ridge of Lanai and above Kamalo on Molokai. Currently, *Melicope munroi* is only known from the Lanaihale summit ridge on Lanai (HINHP Database 2000; GDSI 2000). There are four scattered populations totaling an estimated 300 to 800 individuals on the Lanaihale summit, head of Hauola gulch, Waialala gulch, and the ridge of Waialala gulch (HINHP Database 2000; 64 FR 48307).

Melicope munroi is typically found on slopes in lowland wet shrublands, at elevations of 790 to 1,020 m (2,600 to 3,350 ft). Associated native plant taxa include *Diplopterygium pinnatum, Dicranopteris linearis, Metrosideros polymorpha, Cheirodendron trigynum* (olapa), *Coprosma* sp., *Broussaisia arguta*, other *Melicope* sp., and *Machaerina angustifolia* (uki) (HINHP Database 2000).

The major threats to *Melicope munroi* on Lanai are axis deer and the alien plant taxa *Leptospermum scoparium* and *Psidium cattleianum* (HINHP Database 2000). Random environmental events also threaten the one remaining population (64 FR 48307).

Portulaca sclerocarpa

Portulaca sclerocarpa of the purslane family (Portulacaceae), is a perennial herb with a fleshy tuberous taproot which becomes woody and has stems up to about 20 cm (8 in.) long. The stalkless, succulent, grayish-green leaves are almost circular in cross-section. Dense tufts of hairs are located in each leaf axil (point of divergence between a branch or leaf) and underneath the tight clusters of three to six stalkless flowers grouped at the ends of the stems. Sepals (one of the modified leaves comprising a flower calyx) have membranous edges and the petals are white, pink, or pink with a white base. The hardened capsules open very late or not at all, and contain glossy, dark reddish-brown seeds. This species differs from other native and naturalized species of the genus in Hawaii by its woody taproot, its narrow leaves, and the colors of its petals and seeds. Its closest relative, *P. villosa*, differs mainly in its thinner-walled, opening capsule (Wagner *et al.* 1999).

This species was observed in flower during March 1977, December 1977, and June 1978. The presence of juveniles indicated that pollination and germination were occurring (Service 1996b). Pollination vectors, seed dispersal agents, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown.

Historically and currently, *Portulaca sclerocarpa* is found on an islet off the south coast of the island of Lanai, and on the island of Hawaii. The population on Poopoo Islet off the coast of Lanai contains about 10 plants (HINHP Database 2000; GDSI 2000; Service 1996b). This species grows on exposed ledges in thin soil in coastal communities (Wagner *et al.* 1999; HINHP Database 2000).

The major threats to *Portulaca sclerocarpa* on Lanai are herbivory (feeding on plants) by the larvae of an introduced sphinx moth (*Hyles lineata*) (Frank Howarth, Bishop Museum, *in litt* 2000); competition from introduced plants; and fire (59 FR 10305).

Spermolepis hawaiiensis

Spermolepis hawaiiensis, a member of the parsley family (Apiaceae), is a slender annual herb with few branches. Its leaves, dissected into narrow, lance-shaped divisions, are oblong to somewhat oval in outline and grow on stalks. Flowers are arranged in a loose, compound umbrella-shaped inflorescence arising from the stem, opposite the leaves. *Spermolepis hawaiiensis* is the only member of the genus native to Hawaii. It is distinguished from other native members of the family by being a non-succulent annual with an umbrella-shaped inflorescence (Constance and Affolter 1999). Little is known about the life history of *S. hawaiiensis*. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999).

Historically, *Spermolepis hawaiiensis* was known from Kauai, Oahu, Lanai, and the island of Hawaii (HINHP Database 2000). Currently it is extant on Kauai, Oahu, Molokai, Lanai, West Maui, and Hawaii (59 FR 56333; HINHP Database 2000). On Lanai, this species is known from three populations of 350 to 400 individuals: in the southern edge of Kapoho Gulch, Kamiki Ridge, and around 274 m (900 ft.) downslope of Puu Manu (HINHP Database 2000; Robert Hobdy, DOFAW, pers. comm. 2000).

Spermolepis hawaiiensis is known from rocky, steep slopes growing on ledges and pockets between elevations of 335 and 396 m (1,100 and 1,300 ft). Associated native plant species include *Dodonea viscosa, Panicum* spp. (panic grass), *Heteropogon contortus* (pili grass), *Lipochaeta lavarum* (nehe), and *Reyoldsia sandwicensis* (ohe) (HINHP Database 2000; R. Hobdy, pers. comm. 2000).

The primary threats to *Spermolepis hawaiiensis* on Lanai are habitat degradation by feral goats, competition with various alien plants such as *Lantana camara;* and erosion, landslides, and rockslides due to natural weathering which result in the death of individual plants as well as habitat destruction (59 FR 56333; Service 1999; R. Hobdy, pers. comm. 2000).

Tetramolopium remyi

Tetramolopium remyi, a short-lived perennial member of the sunflower family (Asteraceae), is a much branched, decumbent (reclining, with the end ascending) or occasionally erect shrub up to about 38 cm (15 in.) tall. Its leaves are firm, very narrow, and with the edges rolled inward when the leaf is mature. There is a single flower head per branch. The heads are each comprised of 70 to 100 yellow disk and 150 to 250 white ray florets. The stems, leaves, flower bracts, and fruit are covered with sticky hairs. *Tetramolopium remyi* has the largest flower heads in the genus. Two other species of the genus are known historically from Lanai, but both have purplish rather than yellow disk florets and from 4 to 60 rather than 1 flower head per branch (Lowrey 1999).

Tetramolopium remyi flowers between April and January (Lowrey 1986). Field observations suggest that the population size of the species can be profoundly affected by variability in annual precipitation; the adult plants may succumb to prolonged drought, but apparently there is a seedbank in the soil that can replenish the population during favorable conditions (Lowrey 1986; Service 1995). Such seed banks are of great importance for arid-dwelling plants to allow populations to persist through adverse conditions. The aridity of the area, possibly coupled with human-induced changes in the habitat and subsequent lack of availability of suitable sites for seedling establishment, may be a factor limiting population growth and/or expansion. Requirements of this taxon in these areas are not known, but success in greenhouse cultivation of these plants with much higher water availability implies that, although these plants are drought-tolerant, perhaps the dry conditions in which they currently exist are not optimum. Individual plants are probably not long-lived (Lowrey 1986). Pollination is hypothesized to be possibly by butterflies, bees, or flies. Seed dispersal agents, environmental requirements, and other limiting factors are unknown (Lowrey 1986; Service 1995).

Historically, the species was known from the Lahaina area of West Maui and Lanai. Currently, *Tetramolopium remyi* is only known from two populations on Lanai: one near Awalua Road and the other near Awehi Road, with a total of approximately 26 plants (GDSI 2000; HINHP Database 2000).

Tetramolopium remyi is found in red sandy loam soil in dry *Dodonea viscosa-Heteropogon contortus* communities at an elevation of about 230 m (755 ft). Commonly associated native species include *Bidens mauiensis*, *Waltheria indica* (uha loa), *Wikstroemia oahuensis* (akia), and *Lipochaeta lavarum* (HINHP Database 2000).

Browsing by deer and mouflon sheep and competition from invading weedy species, primarily *Andropogon viginicus* (broomsedge) and *Panicum maximum* (guinea grass), are the main threats to the species on Lanai. The plants are tiny and can easily be displaced and eliminated by invading exotic species. Fire is also a potential threat (Service 1995; 56 FR 47686).

Vigna o-wahuensis

Vigna o-wahuensis, a member of the legume family (Fabaceae), is a slender twining perennial herb with fuzzy stems. Each leaf is made up of three leaflets which vary in shape from round to linear, and are sparsely or moderately covered with coarse hairs. Flowers, in clusters of one to four, have thin, translucent, pale yellow or greenish yellow petals. The two lowermost petals are fused and appear distinctly beaked. The sparsely hairy calyx has asymmetrical lobes. The fruits are long slender pods that may or may not be slightly inflated and contain 7 to 15 gray to black seeds. This species differs from others in the genus by its thin yellowish petals, sparsely hairy calyx, and thin pods which may or may not be slightly inflated (Geesink *et al.* 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors are generally unknown (Service 1999).

Historically, *Vigna o-wahuensis* was known from Niihau, Oahu, and Maui (HINHP Database 2000). Currently, *V. o-wahuensis* is known from the islands of Molokai, Maui, Lanai, Kahoolawe, and Hawaii. There are no currently known populations on Niihau or Oahu (HINHP Database 2000). On Lanai, it is known from a 1986 collection made on the "windward slopes of Kanepuu" (GDSI 2000; HINHP Database 2000; Joel Lau, HINHP, *in litt.* 2000).

While typically reported from dry grassland and shrubland on Kahoolawe, Molokai, and Hawaii, the plant community and associated species, elevation, and threats are unknown on Lanai (HINHP Database 2000; J. Lau, HINHP, *in litt.* 2000; 59 FR 56333).

A summary of populations and landownership for these 19 plant species on Lanai is given in Table 3.

TABLE 3.—SUMMARY OF POPULATIONS AND LANDOWNERSHIP FOR 19 SPECIES ON LANAI

Species	Number of current populations	Landownership		
		Federal	State	Private
Abutilon eremitopetalum	1			X
Bonamia menziesii	3			X
Centaurium sebaeoides	1			X
Clermontia oblongifolia ssp. *mauiensis*	1			X
Ctenitis squamigera	3			X
Cyanea grimesiana ssp. grimesiana	2			X
Cyanea macrostegia ssp. gibsonii	7			X
Cyrtandra munroi	2			X
Gahnia lanaiensis	3			X
Hedyotis mannii	2			X
Hedyotis schlechtendahliana var. *remyi*	3			X
Hibiscus brackenridgei	3			X
Labordia tinifolia var. *lanaiensis*	3			X
Melicope munroi	4			X
Portulaca sclerocarpa	1			X
Spermolepis hawaiiensis	3			X
Tetramolopium remyi	2			X
Vigna o-wahuensis	1			X

TABLE 3.—SUMMARY OF POPULATIONS AND LANDOWNERSHIP FOR 19 SPECIES ON LANAI—Continued

Species	Number of current populations	Landownership		
		Federal	State	Private
Viola lanaiensis	5			X

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Bonamia menziesii, Gahnia lanaiensis, Hedyotis mannii* (as *Hedyotis thyrsoidea* var. *thyrsoidea*), *Hibiscus brackenridgei* (as *Hibiscus brackenridgei* var. *brackenridgei*, var. *mokuleianus,* and var. "from Hawaii"), *Portulaca sclerocarpa, Solanum incompletum* (as *Solanum haleakalense* and *Solanum incompletum* var. *glabratum*, var. *incompletum*, and var. *mauiensis*), *Vigna o-wahuensis* (as *Vigna sandwicensis* var. *heterophylla* and var. *sandwicensis*), and *Viola lanaiensis* were considered endangered; *Cyrtandra munroi* and *Labordia tinifolia* var. *lanaiensis* were considered threatened; and, *Abutilon eremitopetalum, Ctenitis squamigera, Cyanea macrostegia* ssp. *gibsonii*, Melicope munroi (as *Pelea munroi*), and *Tetramolopium remyi* were considered to be extinct.

On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) of our acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of our intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, we published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant taxa, including all of the above taxa except *Cyrtandra munroi, Labordia tinifolia* var. *lanaiensis*, and *Melicope munroi*. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn, and a 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, we published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. We published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), February 21, 1990 (55 FR 6183), September 30, 1993 (58 FR 51144), February 28, 1996 (61 FR 7596), and September 19, 1997 (62 FR 49398). A summary of the status categories for these Lanai plant species in the 1980–1997 notices of review can be found in Table 4(a).

The 20 plants at issue in this proposed rule were listed as endangered species under the Act between 1991 and 1999. A summary of the listing actions can be found in Table 4(b). At the time 17 of these plants were listed, we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the species and/or would not benefit the plant. These not prudent determinations, along with 229 others, were challenged in *Conservation Council for Hawaii* v. *Babbitt* 2 F. Supp. 2d 1280 (D. Haw.1998). On March 9, 1998, the United States District Court for the District of Hawaii directed us to review the prudency determinations for 245 listed plant species in Hawaii, including these species (2 F. Supp. 2d 1280 (D. Haw. 1998)). Among other things, the court held that in most cases we did not sufficiently demonstrate that the species are threatened by human activity or that such threats would increase with the designation of critical habitat. The court also held that we failed to balance any risks of designating critical habitat against any benefits (*Id.* at 1283–1285). For example, the court suggested that, before concluding critical habitat would not be prudent, we should consider whether designation might prevent an inadvertent act of destruction by educating the public.

Regarding our determination that designating critical habitat would have no additional benefits to the species above and beyond those already provided through the section 7 consultation requirement of the Act, the court ruled that we failed to consider the specific effect of the consultation requirement on each species (*Id.* at 1286–88). In addition, the court stated that we did not consider benefits outside of the consultation requirements. In the court's view, these potential benefits include substantive and procedural protections. The court held that substantively, designation establishes a "uniform protection plan" prior to consultation and indicates where compliance with section 7 of the Act is required. Procedurally, the court stated that the designation of critical habitat educates the public and State and local governments and affords them an opportunity to participate in the designation (*Id.* at 1288). The court also stated that private lands may not be excluded from critical habitat designation even though section 7 requirements apply only to Federal agencies. In addition to the potential benefit of informing the public and State and local governments of the listing and of the areas that are essential to the species' conservation, the court found that there may be Federal activity on the private property in the future, even though no such activity may be occurring there at the present (*Id.* at 1285–88). On August 10, 1998, the court ordered us to publish proposed critical habitat designations or non-designations for at least 100 species by November 30, 2000, and to publish proposed designations or non-designations for the remaining 145 species by April 30, 2002.

At the time we listed *Hedyotis schlechtendahliana* var. *remyi, Labordia tinifolia* var. *lanaiensis*, and *Melicope munroi* (64 FR 48307), we determined that designation of critical habitat was prudent and that we would develop critical habitat designations for these three taxa, along with seven others from Maui, Molokai, Lanai, or Kahoolawe (the Maui Nui species), at the same time we developed the designations for the 245 Hawaiian plant species. In *Conservation Council for Hawaii* v. *Babbitt*, CIV No. 99—000283 HG (D. Haw. August 19, 1999, February 16, 2000, and March 28, 2000), the court ordered us to publish proposed critical habitat designations for these 10 Maui

Nui species by November 30, 2000, and to publish final critical habitat designations by November 30, 2001. This notice and proposed rule responds to the court's orders.

To comply with the court orders, between now and April 30, 2002, we plan to publish seven notices of determinations of whether critical habitat is prudent, along with proposed rules as appropriate, in the following groupings: Kauai and Niihau; Maui and Kahoolawe; Lanai; Molokai; Northwest Hawaiian Islands; Hawaii; and Oahu. Each notice will contain proposed prudency determinations for species occurring on that island for which prudency determinations have not previously been proposed. Each proposed rule will also contain proposed designations or non-designations of critical habitat for each plant species known to occur from that island. Thus, a species that occurs on multiple islands may have critical habitat proposed in multiple rules.

The proposed prudency determinations and proposed rules for Kauai and Niihau were published in the **Federal Register** on November 7, 2000 (65 FR 66807). Proposals for Maui and Kahoolawe are being published concurrently with this rule.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. At the time each plant was listed, we determined that designation of critical habitat was prudent for three of these plants (*Hedyotis schlechtendahliana* var. *remyi, Labordia tinifolia* ssp. *lanaiensis,* and *Melicope munroi*) and not prudent for the other plants because it would not benefit the plant and/or would increase the degree of threat to the species.

On November 30, 1998, we published a notice in the **Federal Register** requesting public comments on our reevaluation of whether designation of critical habitat is prudent for the 245 Hawaiian plants at issue (63 FR 65805). The comment period closed on March 1, 1999, and was reopened from March 24, 1999, to May 24, 1999 (64 FR 14209). We received over 100 responses from individuals, non-profit organizations, the State of Hawaii's Division of Forestry and Wildlife, county governments, and Federal agencies (U.S. Department of Defense—Army, Navy, Air Force). Only a few responses offered information on the status of individual plant species or on current management actions for one or more of the 245 Hawaiian plants. While many of the respondents expressed support for the designation of critical habitat for 245 Hawaiian plants, more than 80 percent opposed the designation of critical habitat for these plants. In general, these respondents opposed designation because they believed it will cause economic hardship, chill cooperative projects, polarize relationships with hunters, or potentially increase trespass or vandalism on private lands. In addition, commenters also cited a lack of information on the biological and ecological needs of these plants which they believed may lead to designation based on guesswork. The respondents who supported the designation of critical habitat cited that designation will—(1) provide a uniform protection plan for the Hawaiian Islands; (2) promote funding for management of these plants; (3) educate the public and State government; and (4) protect partnerships with landowners and build trust.

In early February, 2000, we hand-delivered a letter to representatives of the private landowner on Lanai requesting any information considered germane to the management of any of the 245 plants on the island, and containing a copy of the November 30, 1998, **Federal Register** notice, a map showing the general locations of the plants on Lanai, and a handout containing general information on critical habitat. On April 4, 2000, we met with representatives of the landowner to discuss their current land management activities. In addition, we met with Maui County DOFAW staff and discussed their management activities on Lanai.

On November 7, 2000, we published the first of the court-ordered prudency determinations and proposed critical habitat designations or non-designations for Kauai and Niihau plants (65 FR 66807). Proposals for Maui and Kahoolawe plants are being published concurrently with this proposal. We proposed that critical habitat was prudent for nine species (*Bonamia menziesii, Centarium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyrtandra munroi, Hibiscus brackenridgei, Spermolepis hawaiiensis,* and *Vigna o-wahuensis*) from Lanai that also occur on Kauai, Niihau, Maui, and/or Kahoolawe.

TABLE 4(A).—SUMMARY OF CANDIDACY STATUS FOR PLANT SPECIES FROM LANAI

Species	**Federal Register** Notice of Review				
	12/15/80	9/27/85	2/20/90	9/30/93	2/28/96
Abutilon eremitopetalum	C1	C1	C1		
Bonamia menziesii	C1	C1	C1		
Centaurium sebaeoides			C1		
Clermontia oblongifolia ssp. *mauiensis*			C1		
Ctenitis squamigera	C1*	C1*	C1*		
Cyanea grimesiana ssp.*grimesiana*	C1	C1		C2	
Cyanea macrostegia ssp. *gibsonii*	C1	C1	C1		
Cyrtandra munroi	C2	C2	C1		
Gahnia lanaiensis	C1	C1	C1		
Hedyotis mannii	C1*	C1*	C1		
Hedyotis schlechtendahliana var. *remyi*			C2	C2	C
Hibiscus brackenridgei	C1	C1	C1		
Labordia tinifolia var. *lanaiensis*	C2	C2	3C	3C	
Melicope munroi	C1*	C1*	C2	C2	C
Phyllostegia glabra var. *lanaiensis*	C1	C1	C1		
Portulaca sclerocarpa	C1	C1	C1		
Spermolepis hawaiiensis			C1		

TABLE 4(A).—SUMMARY OF CANDIDACY STATUS FOR PLANT SPECIES FROM LANAI—Continued

Species	Federal Register Notice of Review				
	12/15/80	9/27/85	2/20/90	9/30/93	2/28/96
Tetramolopium remyi	C1	C1	C1		
Vigna o-wahuensis	C1	C1	C1		
Viola lanaiensis	C1	C1	C1		

Key:
C: Taxa for which the Service has on file sufficient information on the biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species. (The 1996 Notice of Review discontinued the use of different categories of candidates (as described below; candidates were redefined as species meeting the definition of former C1 species.)
C1: Taxa for which the Service has on file enough sufficient information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species.
C1*: Taxa of known vulnerable status in the recent past that may already have become extinct.
C2: Taxa for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at this time.
3A: Taxa for which the Service has persuasive evidence of extinction. If rediscovered, such taxa might acquire high priority for listing.

Federal Register Notices of Review

1980: 45 FR 82479
1985: 50 FR 39525
1990: 55 FR 6183
1993: 58 FR 51144
1996: 61 FR 7596

TABLE 4(B).—SUMMARY OF LISTING ACTIONS FOR PLANT SPECIES FROM LANAI

Species	Federal status	Proposed rule		Final rule	
		Date	Federal Register	Date	Federal Register
Abutilon eremitopetalum	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686
Bonamia menziesii	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Centaurium sebaeoides	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770
Clermontia oblongifolia ssp. *mauiensis*	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Ctenitis squamigera	E	06/24/93	58 FR 34231	09/09/94	59 FR 49025
Cyanea grimesiana ssp. *grimesiana*	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108
Cyanea macrostegia ssp. *gibsonii*	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686
Cyrtandra munroi	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Gahnia lanaiensis	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686
Hedyotis mannii	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Hedyotis schlechtendahliana var. *remyi*	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307
Hibiscus brackenridgei	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Labordia tinifolia var. *lanaiensis*	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307
Melicope munroi	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307
Phyllostegia glabra var. *lanaiensis*	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686
Portulaca sclerocarpa	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305
Spermolepis hawaiiensis	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Tetramolopium remyi	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686
Vigna o-wahuensis	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Viola lanaiensis	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "* * * the direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat

designation would not afford any additional protections under the Act against such activities.

In order to be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat at the time of listing and based on what we know at the time of the designation. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and thus must base our designations on what, at the time of designation, we know to be critical habitat.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. Within the geographic area occupied by the species, we will not designate areas that do not now have the primary constituent elements , as defined at 50 CFR 424.12(b), that provide essential life cycle needs of the species.

Our regulations state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species." (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (Vol. 59, p. 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires Service biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by states and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (*i.e.* gray literature).

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do *not* signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under Section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the Section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Prudency Redeterminations

As previously stated, designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (ii) such designation of critical habitat would not be beneficial to the species (50 CFR 424.12(a)(1)).

To determine whether critical habitat would be prudent for each of the eight species at issue, we analyzed the potential threats and benefits for each species in accordance with the court's order. One species, *Phyllostegia glabra* var. *lanaiensis,* known only from Lanai, is no longer extant in the wild. *Phyllostegia glabra* var. *lanaiensis* was last collected on "northern Lanai" on June, 6, 1914 (HINHP Database 2000). In addition, this species is not known to be in storage or under propagation. Therefore, we believe it may be extinct. Under these circumstances, we propose that designation of critical habitat for *Phyllostegia glabra* var. *lanaiensis* is not prudent because such designation would be of no benefit to this species. If this species is rediscovered, we may revise this proposal to incorporate or address new information as new data becomes available. See 16 U.S.C. 1532(5)(B); 50 CFR 424.12(f)).

Due to low numbers of individuals and/or populations and their inherent immobility, the other seven plants may be vulnerable to unrestricted collection, vandalism, or disturbance. However, we examined the evidence available for each of these taxa and have not, at this time, found specific evidence of taking, vandalism, collection or trade of these taxa or of similarly situated species. Consequently, while we remain concerned that these activities could potentially threaten these seven plant species in the future, consistent with applicable regulations (50 CFR 424.12(a)(1)(l)) and the court's discussion of these regulations, we do not find that any of these species are currently threatened by taking or other human activity, which threats would be exacerbated by the designation of critical habitat.

In the absence of finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential areas; (3) providing educational benefits to State or county governments or private entities; and, (4) preventing people from causing inadvertent harm to the species.

In the case of these seven species, there would be some benefits to critical habitat. The primary regulatory effect of critical habitat is the section 7

requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. While all of these species are located exclusively on non-Federal lands with limited Federal activities, there may be Federal actions affecting these lands in the future. While a critical habitat designation for habitat currently occupied by these species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat were designated. There may also be some educational or informational benefits to the designation of critical habitat. Educational benefits include the notification of land owner(s), land managers, and the general public of the importance of protecting the habitat of these species and dissemination of information regarding their essential habitat requirements.

Therefore, we propose that critical habitat is prudent for seven species (*Abutilon eremitopetalum, Cyanea macrostegia* ssp. *gibsonii, Gahnia lanaiensis, Hedyotis mannii, Portulaca sclerocarpa, Tetramolopium remyi,* and *Viola lanaiensis*) because the potential benefits of designating critical habitat essential for the conservation of these species outweigh the risks, resulting from human activity, of designation. We propose that designation of critical habitat is not prudent for one species, *Phyllostegia glabra* var. *lanaiensis,* since we believe it may be extinct, and because such a designation would not be beneficial to this species.

Primary Constituent Elements

In accordance with section 4(b)(2) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to, space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and, habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

As stated above in the discussion about each of the 19 species, very little is known about the specific physical and biological requirements of these species. As such, we are proposing to define the primary constituent elements on the basis of general habitat features of the areas in which the plant species are currently found, such as the type of plant community and their physical location (*e.g.,* steep rocky cliffs, talus slopes, stream banks) and elevation. Therefore, the descriptions of the physical elements of the locations of each of these species and the plant community associated with the species, as described in the **SUPPLEMENTARY INFORMATION:** *Discussion of the Plant Taxa* section above, constitute the primary constituent elements for these species.

The currently known primary constituent elements of critical habitat for *Vigna o-wahuensis* on Lanai are unknown because we are not able, at this time, to ascertain the specific location of *Vigna o-wahuensis* on Lanai. This species was last collected 14 years ago from the "windward slopes of Kanepuu" (HINHP Database 2000; J. Lau, *in litt.* 2000). We are not, therefore, designating critical habitat for *Vigna o-wahuensis,* on Lanai. However, critical habitat has been proposed for this species on Maui and Kahoolawe, and may be considered on the island of Hawaii. Future field surveys of this relatively large area encompassed by the "windward slopes of Kanepuu" may lead to a rediscovery of the location of this species and may enable us to determine the habitat components essential for the conservation of *Vigna o-wahuensis* on Lanai.

Methods for Selection of Areas for Proposed Critical Habitat Designations

We have defined primary constituent elements based on the general habitat features of the areas in which they currently occur such as the type of plant community in which the plants occur, their physical location (*e.g.,* steep rocky cliffs, talus slopes, stream banks), and elevation. The areas we propose to designate as critical habitat provide some or all of the habitat components essential for the conservation of 18 of the 19 plant species.

Critical habitat may also include areas outside the geographic area presently occupied by a species upon a determination that such areas are essential to the conservation of the species (16 U.S.C. 1532 (5)(A)(ii)). This may include, for example, potentially suitable unoccupied habitat that is important to the recovery of the species. We have not included such areas in the proposed designations for these 18 species because of our limited knowledge of the historical range (the geographical area outside the area presently occupied by the species), and our lack of more detailed information on the specific physical or biological features essential for the conservation of the species that would be needed, for instance, to determine where to reintroduce a species.

Historical (pre-1970), or even post-1970, records for a species may be based on herbarium specimens that contain only the most rudimentary collection information, such as only the name of the island from which the specimen was collected or a general place name (*e.g.,* north Lanai and Lanaihale). In the main Hawaiian Islands, climatic and ecological conditions such as rainfall, elevation, slope, aspect, *etc.,* may vary dramatically within a relatively short distance. Therefore, a simple place name does not provide adequate information on the physical and biological features that may have occurred there or may occur there now.

The unpredictable distribution of Hawaiian plant species also makes it difficult to designate potentially suitable unoccupied habitat. For example, currently a species may be known from northern and southern (or eastern and western) locations on an island but not from intervening locations in similar habitat. Based on the best available information, we are unable to determine whether a species once occurred in the intervening areas and disappeared from there prior to Polynesian or European times (thus never having been collected or documented there), or simply never occurred there.

We consider reintroduction (the planting of propagated individuals or seedlings into an area) to be an acceptable method to try to achieve plant species recovery. However, native plant reintroductions are difficult, and successful efforts are not common. We do not know enough about these 18 species to identify areas where reintroductions are likely to be successful. We will continue to support experimental efforts to reintroduce species that may eventually provide us with additional information on the physical and biological features essential to the conservation of these species, and thus, may eventually result in identification of unoccupied habitat for future designation.

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific

information available to determine areas that contain those physical and biological features that are essential for the survival and recovery of the 18 plant species. This information included site-specific species information from the HINHP and our rare plant database, species information from the Center for Plant Conservation's (CPC) rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum, recent biological surveys and reports, our recovery plans for 15 of these 18 species, discussions with botanical experts, and recommendations (see below) from the Hawaii and Pacific Plant Recovery Coordinating Committee (HPPRCC) (CPC *in litt.* 1999; HINHP Database 2000, HPPRCC 1998; Service 1995, 1996a, 1996b, 1997, 1998, 1999).

In 1994, the HPPRCC initiated an effort to identify and map habitat it believed to be important for the recovery of 282 endangered and threatened Hawaiian plant species. The HPPRCC identified these areas on most of the islands in the Hawaiian chain, and in 1999, we published them in our *Recovery Plan for the Multi-Island Plants* (Service 1999). Because the HPPRCC identified essential habitat areas for all listed, proposed, and candidate plant species and evaluated species of concern to determine if essential habitat areas would provide for their habitat needs as well, the HPPRCC's mapping of habitat is distinct from the regulatory designation of critical habitat, as defined by the Act. While these habitat maps are a planning tool to focus conservation efforts on the areas that may be most important to the conservation of Hawaii's listed plant species, as well as other plant species of concern, it does not substitute for the more exacting regulatory process of designating critical habitat. Therefore, the critical habitat designations proposed in this rule do not include all of the habitat identified by the HPPRCC. In addition, the HPPRCC expects there will be subsequent efforts to further refine the locations of important habitat areas and that new survey information or research findings may also lead to additional refinements (HPPRCC 1998).

For these 18 plant species from Lanai, currently occupied habitat was examined and critical habitat boundaries were delineated in such a way that locations with a high density of endangered plants could be depicted clearly (multi-species units). However, these multi-species critical habitat units are not homogenous or uniform in nature, and critical habitat units often encompass a number of plant community types.

To examine plant occurrences, every current (post-1970) location of every species was delineated within a 536 m (1,760 ft) radius circle with an additional 50 m (164 ft) added to the radius of each location, in order to insure enough area to provide for the proper ecological functioning of the habitat immediately supporting the plant, for a total of 586 m (1,924 ft) radius. This radius is consistent with the accuracy of the mapped locations of the plant(s), and is based on the standard mapping methodology for rare species used by the HINHP (1996). The additional 50 m (164 ft) is consistent with the guidelines identified in the recovery plans for these species for minimum-sized enclosures for rare plants (Service 1995, 1996a, 1996b, 1997, 1998, 1999). In cases where there were isolated species locations, a circular area with a radius of roughly 586 m (1,924 ft) is proposed as critical habitat (HINHP 1996; Service 1995, 1996a, 1996b, 1997, 1998, 1999).

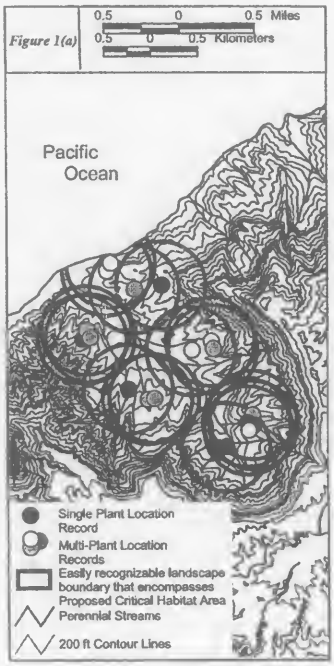
The manner in which we delineated each multi-species proposed critical habitat unit are as follows:

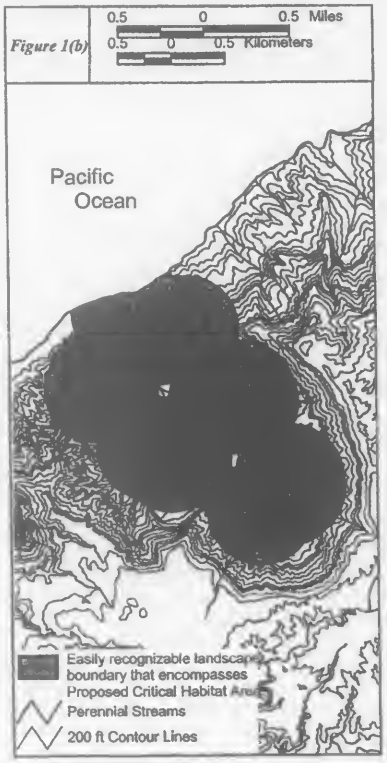
(1) Known current locations of each species were delineated using the guidelines explained above (Figure 1(a)).

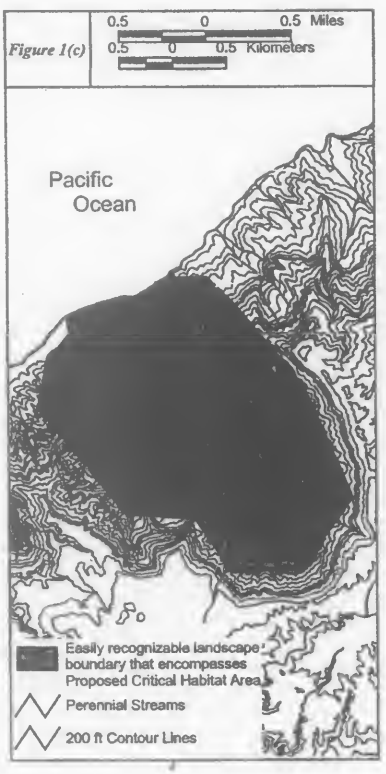
(2) The perimeter boundaries of individual circular areas were connected to form unit area boundaries (Figure 1(b)).

(3) Unit area boundaries were delineated to follow significant topographic features (50 CFR 424.12(c)) such as coastlines, ridgelines, and valleys (Figure 1(c)).

These delineation methods were used to facilitate identification of boundary lines and to aid in implementation of on-the-ground conservation measures. In delineating critical habitat units we made an effort to avoid developed areas such as towns, agricultural lands, and other lands unlikely to contribute to the conservation of these 18 species. Within the critical habitat boundaries, adverse modification would only generally occur if the primary constituent elements are affected. Therefore, not all activities within critical habitat would trigger an adverse modification conclusion. Existing features and structures within proposed areas, such as buildings, roads, aqueducts, telecommunications equipment, arboreta and gardens, heiaus (pre-Christian place of worship, shrine), and other man-made features, do not contain, and are not likely to develop, constituent elements. Therefore, unless a Federal action related to such features or structures indirectly affected nearby habitat containing the primary constituent elements, operation and maintenance of such features or structures would not be impacted by the designation of critical habitat.







All currently occupied sites containing one or more of the primary constituent elements considered essential to the conservation of these 18 plant species were examined to determine if additional special management considerations or protection are required above those currently provided. We reviewed all available management information on these plants at these sites including published reports and surveys; annual performance reports; forestry management plans; grants; memoranda of understanding and cooperative agreements; State of Hawaii, Division of Forestry and Wildlife (DOFAW) planning documents; internal letters and memos; biological assessments and environmental impact statements; and, section 7 consultations. Additionally, we contacted the major private landowner on Lanai by mail and we met with the landowner's representatives in April 2000 to discuss their current management for the plants on their lands. We also met with Maui County DOFAW office staff to discuss management activities they are conducting on Lanai.

Pursuant to the definition of critical habitat in section 3 of the Act, any area so designated must also require "special managment considerations or protections." Adequate special management or protection is provided by a legally operative plan that addresses the maintenance and improvement of the essential elements and provides for the long-term conservation of the species. The Service considers a plan adequate when it meets all of the following three criteria: (1) The plan provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population or the enhancement or restoration of its habitat within the area covered by the plan; (2) the plan provides assurances that the management plan will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule and/or have adequate funding to implement the management plan); and, (3) the plan provides assurances the conservation plan will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives). If an area is covered by a plan that meets these criteria, it does not constitute critical habitat as defined by the Act.

In determining and weighing the relative significance of the threats that would need to be addressed in management plans or agreements, we considered the following:

(1) The factors that led to the listing of the species, as described in the final rules for listing each of the species. For all or nearly all endangered and threatened plants in Hawaii, the major threats include adverse impacts due to non-native plant and animal species. Direct browsing, digging, and trampling by ungulates, including pigs, goats, cattle, sheep, and deer, and direct competition from non-native plants have led to the decline of Hawaii's native flora (Cuddihy and Stone 1990; Loope 1998; Scott *et al.* 1986; Smith 1985; Stone 1985; Service 1995, 1996a, 1996b, 1997, 1998, 1999; Vitousek 1992; Wagner *et al.* 1985). Ungulate activity in most areas results in an increase of non-native plants because most of these non-native plants are able to colonize newly disturbed areas more quickly and effectively than Hawaii's native plants (Cuddihy and Stone 1990; Mack 1992; Scott *et al.* 1986; Smith 1985; Tunison *et al.* 1992; Service 1995, 1996a, 1996b, 1997, 1998, 1999).

(2) The recommendations from the HPPRCC in their 1998 report ("Habitat Essential to the Recovery of Hawaiian Plants"). As summarized in this report, recovery goals for endangered Hawaiian plant species cannot be achieved with ungulates (*e.g.*, pigs, goats, deer, and sheep) present in Essential Habitat Areas.

(3) The management actions needed for assurance of survival and ultimate recovery of Hawaii's endangered plants. These actions are described in our recovery plans for 15 of the 18 species (Service 1995, 1996a, 1996b, 1997, 1998, 1999), in the HPPRCC (1998) report, and in various other documents and publications relating to plant conservation in Hawaii (Cuddihy and Stone 1990; Mueller-Dombois 1985; Smith 1985; Stone 1985; Stone *et al.* 1992). These actions include, but are not limited to, the following: (1) Feral ungulate control; (2) non-native plant control; (3) rodent control; (4) invertebrate pest control; (5) fire control; (6) maintenance of genetic material of the endangered and threatened plant species; (7) propagation, reintroduction, and/or augmentation of existing populations into areas deemed essential for the recovery of these species; (8) on-going management of the wild, outplanted, and augmented populations; (9) habitat management and restoration in areas deemed essential for the recovery of these species; and (10) monitoring of the wild, outplanted, and augmented populations.

In general, taking all of the above recommended management actions into

account, the following management actions are ranked in order of importance. It should be noted, however, that, on a case-by-case basis, some of these actions may rise to a higher level of importance for a particular species or area, depending on the biological and physical requirements of the species and the location(s) of the individual plants. These actions include, but are not limited to, the following: (1) Feral ungulate control; (2) non-native plant control; (3) rodent control; (4) invertebrate pest control; (5) fire control; (6) maintenance of genetic material of the endangered and threatened plants species; (7) propagation, reintroduction, and/or augmentation of existing populations into areas deemed essential for the recovery of these species; (8) ongoing management of the wild, outplanted, and augmented populations; (9) maintenance of natural pollinators and pollinating systems, when known; (10) habitat management and restoration in areas deemed essential for the recovery of the species; (11) monitoring of the wild, outplanted, and augmented populations; (12) rare plant surveys; and (13) control of human activities and access.

As shown in Table 3, these 18 species of plants occur on private land on the island of Lanai. Information received in response to our two public notices, and meetings with representatives of the landowner and Maui County DOFAW staff, indicated that there is little on-going conservation management for these plants, except as noted below. Without management plans and assurances that the plans will be implemented, we are unable to find that the land in question does not require special management or protection.

One species (*Bonamia menziesii*) is reported from The Nature Conservancy of Hawaii's Kanepuu Preserve which is located in the northeast central portion of Lanai (GDSI 2000; HINHP Database 2000; The Nature Conservancy of Hawaii (TNCH) 1997). This preserve was established by a grant of a perpetual conservation easement from the private landowner to TNC and is included in the State's Natural Area Partnership (NAP) program, which provides matching funds for the management of private lands that have been permanently dedicated to conservation (TNCH 1997).

Under the NAP program, the State of Hawaii provides matching funds on a two-for-one basis for management of private lands dedicated to conservation. In order to qualify for this program, the land must be dedicated in perpetuity through transfer of fee title or a conservation easement to the State or a cooperating entity. The land must be managed by the cooperating entity or a qualified landowner according to a detailed management plan approved by the Board of Land and Natural Resources. Once approved, the 6-year partnership agreement between the State and the managing entity is automatically renewed each year so that there is always 6 years remaining in the term, although the management plan is updated and funding amounts are re-authorized by the board at least every 6 years. By April 1 of any year, the managing partner may notify the State that it does not intend to renew the agreement; however, in such case the partnership agreement remains in effect for the balance of the existing 6 year term, and the conservation easement remains in full effect in perpetuity. The conservation easement may be revoked by the landowner only if State funding is terminated without the concurrence of the landowner and cooperating entity. Prior to terminating funding, the State must conduct one or more public hearings. The NAP program is funded through real estate conveyance taxes which are placed in a Natural Area Reserve Fund. Participants in the NAP program must provide annual reports to the State Department of Land and Natural Resources (DLNR), and DLNR makes annual inspections of the work in the reserve areas. *See* Haw. Rev. Stat. Secs. 195–1–195–11, and Hawaii Administrative Rules Sec.13–210.

The management program within the preserve is documented in long-range management plans and yearly operational plans. These plans detail management measures that protect, restore, and enhance the rare plants and their habitats within the preserve (TNCH 1997, 1998, 1999). These management measures address the factors which led to the listing of this species including control of non-native species of ungulates, rodents, and weeds; and fire control. In addition, habitat restoration and monitoring are also included in these plans.

The primary goals within Kanepuu Preserve are to: (1) Control non-native species; (2) suppress wildfires; and (3) restore the integrity of the dryland forest ecosystem through monitoring and research. Specific management actions to address feral ungulates include the replacement of fences around some of the management units with Benzinal-coated wire fences; staff hunting and implementation of a volunteer hunting program with the DLNR. Additionally, a small mammal control program has been established to prevent small mammals from damaging rare native species and limit their impact on the preserve's overall native biota.

To prevent further displacement of native vegetation by non-native plants, a non-native plant control plan has been developed, which includes monitoring of previously treated areas, and the control of non-native plants in management units with restoration projects.

The fire control program focuses on suppression and pre-suppression. Suppression activities consist of coordination with State and county fire-fighting agencies to develop a Wildfire Management Plan for the preserve (TNCH 1998). Pre-suppression activities include mowing inside and outside of the fence line to minimize fuels.

A restoration, research and monitoring program has been developed at Kanepuu to create a naturally regenerating *Nestegis sandwicensis-Diospyros sandwicensis* dryland forest, and expand the current range of native-dominated vegetation. Several years of casual observation indicate that substantial natural regeneration is occurring within native forest patches in the deer-free units (TNCH 1999). A draft of the Kanepuu Restoration Plan was completed in June 1999. This plan identifies sites for rare plant outplanting and other restoration activities. Monitoring is an important component to measure the success or failure rate of the animal and weed control programs. Management of these non-native species control programs is continually amended to preserve the ecological integrity of the preserve.

Because this plant and its habitat within the preserve are protected and managed, this area is not in need of special management considerations or protection. Therefore, we have determined that the private land within Kanepuu Preserve does not meet the definition of critical habitat in the Act, and we are not proposing to designate this land as critical habitat. Should the status of this reserve change, for example, by non-renewal of the partnership agreement or termination of NAP funding, we will reconsider whether it meets the definition of critical habitat, and if so, we may propose to amend critical habitat to include the reserve at that time (50 CFR 424.12(g)).

We believe that Kanepuu Preserve is the only potential critical habitat area on Lanai at this time that does not require special management considerations or protection. However, we are specifically soliciting comments on the appropriateness of this approach. If we receive information during the public comment period that any of the

lands within the proposed designations are actively managed to promote the conservation and recovery of the 18 listed species at issue in this proposed designation, in accordance with long term conservation management plans or agreements, and there are assurances that the proposed management actions will be implemented and effective, we can consider this information when making a final determination of critical habitat. We are also soliciting comments on whether future development and approval of conservation measures (*e.g.*, Conservation Agreements, Safe Harbor Agreements) should trigger revision of designated critical habitat to exclude such lands and, if so, by what mechanism.

In summary, the proposed critical habitat areas described below constitute our best assessment of the physical and biological features needed for the conservation of these 18 plant species and the special management needs of the species, and are based on the best scientific and commercial information available and described above. We put forward this proposal acknowledging that we have incomplete information regarding many of the primary biological and physical requirements for these species. However, both the Act and the relevant court orders require us to proceed with designation at this time based on the best information available. As new information accrues, we may reevaluate which areas warrant critical habitat designation. We anticipate that comments received through the public review process and from any public hearings, if requested, will provide us with additional information to use in our decision-making process and in assessing the potential impacts of designating critical habitat for one or more of these species.

The approximate areas of proposed critical habitat, all under private ownership, are shown in Table 5. Proposed critical habitat includes habitat for these 18 species predominantly on the eastern side of Lanai in the Lanaihale area. Lands proposed as critical habitat have been divided into 11 units. A brief description of each unit is presented below.

Descriptions of Critical Habitat Units

Lanai A

The proposed unit Lanai A provides critical habitat for eleven species: *Clermontia oblongifolia* ssp. *mauiensis*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea macrostegi* ssp. *gibsonii*, *Cyrtandra munroi*, *Ctenitis squamigera*, *Gahnia lanaiensis*, *Hedyotis mannii*, *Hedyotis schlechtendahliana* var. *remyi*, *Labordia tinifolia* var. *lanaiensis*, *Melicope munroi*, and *Viola lanaiensis*. This unit contains a total of 1,060 ha (2,619 ac). The land contained within this unit is owned solely by a private owner. The natural features found in this unit are portions of Hulopoe Gulch, Kaiholena Gulch, Puu Kilea, Hookio Gulch, Waialala Gulch, Kunoa Gulch, Puu None, Puu Alii, Puu Aalii, Hauola Gulch, Lanaihale, Puu Kole, Haalelepaakai, Waiakaiole Gulch, Puhielelu Ridge, Paliakoae Gulch, Waiapaa Gulch, Kapano Gulch, Kehewai Ridge, and Kahinahina Ridge. This unit is bound on the southwest by Kaluanui and Hii Flats.

TABLE 5.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA BY UNIT, LANAI, MAUI COUNTY, HAWAII

Unit name	State	Private	Federal	Total
Lanai A	N/A	1,060 ha (2,619 ac)	N/A	1,060 ha (2,619 ac)
Lanai B	N/A	115 ha (284 ac)	N/A	115 ha (284 ac)
Lanai C	N/A	115 ha (284 ac)	N/A	115 ha (284 ac)
Lanai D	N/A	115 ha (284 ac)	N/A	115 ha (284 ac)
Lanai E	N/A	115 ha (284 ac)	N/A	115 ha (284 ac)
Lanai F	N/A	157 ha (389 ac)	N/A	157 ha (389 ac)
Lanai G	N/A	1 ha (2 ac)	N/A	1 ha (2 ac)
Lanai H	N/A	115 ha (285 ac)	N/A	115 ha (285 ac)
Lanai I	N/A	117 ha (289 ac)	N/A	117 ha (289 ac)
Lanai J	N/A	43 ha (106 ac)	N/A	43 ha (106 ac)
Total	N/A	1,953 ha (4,826 ac)	N/A	1,953 ha (4,826 ac)

Lanai B

The proposed unit Lanai B provides critical habitat for one species: *Spermolepis hawaiiensis*. This unit contains a total of 115 ha (284 ac). The land contained within this unit is owned solely by a private owner. The natural features found in this unit are small portions of Kawaiu and Kapoho Gulches.

Lanai C

The proposed unit Lanai C provides critical habitat for one species: *Tetramolopium remyi*. This unit contains a total of 115 ha (284 ac). The land contained within this unit is owned solely by a private owner. The natural features found in this unit are Mauna o Umi, Kaokai and portions of Awehi Gulch.

Lanai D

The proposed unit Lanai D provides critical habitat for one species: *Bonamia menziesii*. This unit contains a total of 115 ha (284 ac). The land contained within this unit is owned solely by a private owner. The natural feature found in this unit is a portion of Puhielelu Ridge.

Lanai E

The proposed unit Lanai E provides critical habitat for one species: *Abutilon eremitopetalum*. This unit contains a total of 115 ha (284 ac). The land contained within this unit is owned solely by a private owner. The natural features found in this unit are portions of Kehowai Ridge and Kahea Gulch.

Lanai F

The proposed unit Lanai F provides critical habitat for two species: *Centaurium sebaeoides* and *Hibiscus brackenridgei*. This unit contains a total of 157 ha (389 ac). The land contained within this unit is owned solely by a private owner. The natural features found in this unit are portions of Hinuhinu Pali, Naio Gulch, and Maunalei Gulch.

Lanai G

The proposed unit Lanai G provides critical habitat for one species: *Portulaca sclerocarpa*. This unit contains a total of 1 ha (2 ac). The land contained within this unit is owned solely by a private owner. This unit is Poopoo Islet.

Lanai H

The proposed unit Lanai H provides critical habitat for one species: *Tetramolopium remyi.* This unit contains a total of 115 ha (285 ac). The land contained within this unit is owned solely by a private owner.

Lanai I

The proposed unit Lanai I provides critical habitat for one species: *Spermolepis hawaiiensis.* This unit contains a total of 117 ha (289 ac). The land contained within this unit is owned solely by a private owner. The natural features found in this unit are portions of Kaonaohiokala Ridge, Kaa Gulch, Kamiki Ridge, and Palea Ridge.

Lanai J

The proposed unit Lanai J provides critical habitat for one species: *Hibiscus brackenridgei.* This unit contains a total of 43 ha (106 ac). The land contained within this unit is owned solely by a private owner. The natural feature found in this unit is Kaena Point.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. When multiple units of critical habitat are designated, each unit may serve as the basis of a jeopardy analysis if protection or different facets of the species' life cycle or its distribution are essential to the species as a whole for both its survival and recovery. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Under section 7(a) of the Act, Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) and regulations at 50 CFR 402.10 requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as a biological opinion if the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion. See 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. Through this consultation, we would advise the agencies whether the permitted actions would likely jeopardize the continued existence of the species or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control has been retained or is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of any one of the 18 species is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Overgrazing; maintenance of feral ungulates; clearing, cutting of native live trees and shrubs, whether by burning or mechanical, chemical, or other means (*e.g.*, woodcutting, bulldozing, construction, road building, mining, herbicide application, etc.); introducing or enabling the spread of non-native species; and taking actions that pose a risk of fire.

(2) Water diversion or impoundment, groundwater pumping, or other activity that alters water quality or quantity to an extent that wet forest or bog vegetation is significantly affected; and,

(3) Recreational activities that appreciably degrade vegetation.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to "destroy or

adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. In those cases, the ramifications of its designation are few or none. Designation of critical habitat in areas occupied by any of these plants is not likely to result in a regulatory burden above that already in place due to the presence of the listed species. When critical habitat is designated in unoccupied areas, there can be an increase in regulatory requirements on Federal agencies. If occupied habitat becomes unoccupied in the future, there is a potential benefit to critical habitat in such areas.

Actions affected by designation of critical habitat may include, but are not limited to:

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers (Corps) under section 404 of the Clean Water Act;

(2) Development requiring permits from Federal agencies such as Housing and Urban Development;

(3) Regulation of federally funded silviculture and forestry projects, and research by the U.S. Department of Agriculture (Forest Service);

(4) Regulation of airport improvement activities by the Federal Aviation Administration (FAA) jurisdiction;

(5) Road construction and maintenance by, or funded by, the U.S. Department of Transporation (DOT);

(6) Military training or similar activities of the U.S. Department of Defense (DOD);

(7) Federally funded importation of alien species for research, agriculture, and aquaculture, and the release or authorization of release of biological control agents by the U.S. Department of Agriculture;

(8) Regulation of activities affecting point source pollution discharges into waters of the United States by the Environmental Protection Agency (EPA) under section 402 of the Clean Water Act.;

(9) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency (FEMA);

(10) Installation and maintenance of U.S. Coast Guard navigational aids;

(11) Construction of communication sites licensed by the Federal Communications Commission (FCC); and,

(12) Activities not mentioned above funded or authorized by the U.S. Department of Agriculture (Forest Service, Natural Resources Conservation Service), DOD, DOT, Department of Energy, Department of Interior (U.S. Geological Survey, National Park Service), Department of Commerce (National Oceanic and Atmospheric Administration) or any other Federal agency.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and plants and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 N.E. 11th Avenue, Portland, Oregon 97232 (telephone 503/231–2063; facsimile 503/231–6243).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce its availability with a notice in the **Federal Register**, and we will reopen the comment period for 30 days at that time.

Public Comments Solicited

It is our intent that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry or any other interested party concerning this proposed rule.

In this proposed rule we do not propose to designate critical habitat on the private land within Kanepuu Preserve because this area is permanently dedicated to conservation and is managed for the benefit of the federally protected plant species found there. We believe that this area is not in need of special management considerations or protection and, therefore, does not meet the definition of critical habitat in the Act. We are, however, specifically soliciting comments on the appropriateness of this approach.

We invite comments from the public that provide information on whether lands within proposed critical habitat are currently being managed to address conservation needs of these listed plants. As stated earlier in this proposed rule, if we receive information that any of the areas proposed as critical habitat are adequately managed, we may delete such areas from the final rule, because they would not meet the definition in section 3(5)(A)(I) of the Act. In determining adequacy of management, we must find that the management effort is sufficiently certain to be implemented and effective so as to contribute to the elimination or adequate reduction of relevant threats to the species.

In determining whether an action is likely to be implemented, we would generally consider the following:

(1) Whether or not a management plan or agreement exists which specifies the management actions being implemented, or if implemented, the schedule for implementation;

(2) Whether there are responsible party(ies), and funding source(s) or other resources necessary to implement the actions, with a high level of assurance that the funding will be provided; and

(3) The authority and long-term commitment of the party(ies) to the agreement or plan to implement the management actions, as demonstrated, for example, by a legal instrument providing enduring protection and management of the lands.

In determining whether an action is likely to be effective, we would generally consider whether or not the plan is specific concerning the threats to be addressed by the management actions; whether such actions have been successful in the past; whether there are provisions for monitoring and assessment of the effectiveness of the management actions; and whether adaptive management principles have been incorporated into the plan.

We are aware that the private landowner on the island of Lanai may be considering the development and implementation of land management plans or agreements that may promote the conservation and recovery of endangered and threatened plant

species on the island of Lanai. We are soliciting comments in this proposed rule on whether current land management plans or practices applied within the areas proposed as critical habitat adequately address the threats to these listed species. We are also soliciting comments on whether future development and approval of conservation measures (*e.g.*, Conservation Agreements, Safe Harbor Agreements, etc.) should be excluded from critical habitat, and if so, by what mechanism.

In addition, we are seeking comments on the following:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act including whether the benefits of designation would outweigh the benefits of exclusion;

(2) The reasons why any particular area should or should not be designated as critical habitat for any of these species, as critical habitat is defined by section 3 of the Act (16 U.S.C. 1532 (5));

(3) Specific information on the amount and distribution of habitat for *Abutilon eremitopetalum, Bonamia menziesii, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea macrostegia* ssp. *gibsonii, Cyrtandra munroi, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hibiscus brackenridgei, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Portulaca sclerocarpa, Spermolepis hawaiiensis, Tetramolopium remyi, Vigna o-wahuensis*, and *Viola lanaiensis*, and their habitat; and what habitat is essential to the conservation of these species and why;

(4) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any foreseeable economic or other impacts resulting from the proposed designations of critical habitat, including, any impacts on small entities or families; and

(6) Economic and other values associated with designating critical habitat for the above 18 plant species such as those derived from non-consumptive uses (*e.g.*, hiking, camping, birding, enhanced watershed protection, increased soil retention, "existence values," and reductions in administrative costs).

Our practice is to make comments available for public review during regular business hours, including names and home addresses of respondents. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address, is available for public inspection in their entirety.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing and critical habitat decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite the peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designations of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the "Supplementary Information" section of the preamble helpful in understanding the document? (5) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may e-mail your comments to this address: Execsec@ios.doi.gov.

Required Determinations

1. Regulatory Planning and Review

In accordance with Executive Order 12866, this action was submitted for review by the Office of Management and Budget (OMB). We are in the process of preparing an economic analysis to determine the economic consequences of designating the specific areas identified as critical habitat. If our economic analysis reveals that the economic impacts of designating any area as critical habitat outweigh the benefits of designation, we may exclude those areas from consideration, unless such exclusion will result in the extinction of the species.

(a) While we will prepare an economic analysis to assist us in considering whether areas should be excluded pursuant to section 4 of the Act, at this time we do not believe this rule will have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. Therefore we do not believe a cost benefit and economic analysis is required.

These 18 plants were listed as endangered species between the years 1991 and 1999. The areas proposed for critical habitat are currently occupied by one or more of these species. Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency (see Table 6 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as "jeopardy" under the Act. Accordingly, the designation of currently occupied areas as critical habitat does not have any additional incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or

funding. Non-Federal persons that do not have a Federal "sponsorship" of their actions are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning "take" of the species).

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of these 18 plant species since their listing between 1991 and 1999. The prohibition against adverse modification of critical habitat would not be expected to impose any additional restrictions to those that currently exist because all proposed critical habitat is currently occupied.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and as discussed above we do not anticipate that the adverse modification prohibition resulting from critical habitat designation will have any incremental effects.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Act.

2. Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis (under section 4 of the Act), we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence. As indicated on Table 5 (see "Methods for Selection of Areas for Proposed Critical Habitat Designations") we have designated privately owned property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Corps under section 404 of the Clean Water Act;

(2) Development on private or State lands requiring permits from other Federal agencies such as Housing and Urban Development;

(3) Regulation federally funded silviculture and forestry projects, and research by the U.S. Department of Agriculture (Forest Service);

(4) Regulation of airport improvement activities by the FAA jurisdiction;

(5) Road construction and maintenance by, or funded by, the DOT;

(6) Military training or similar activities of the DOD;

(7) Federally funded importation of alien species for research, agriculture, and aquaculture, and the release or authorization of release of biological control agents by the U.S. Department of Agriculture;

(8) Regulation of activities affecting point source pollution discharges into waters of the United States by the EPA under section 402 of the Clean Water Act;

(9) Hazard mitigation and post-disaster repairs funded by the FEMA;

(10) Installation and maintenance of U.S. Coast Guard navigational aids;

(11) Construction of communication sites licensed by the FCC; and,

(12) Activities not mentioned above funded or authorized by the U.S. Department of Agriculture (Forest Service, Natural Resources Conservation Service), DOD, DOT, Department of Energy, Department of Interior (U.S. Geological Survey, National Park Service), Department of Commerce (National Oceanic and Atmospheric Administration) or any other Federal agency.

Many of these activities sponsored by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this rule would impose no additional restrictions.

3. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we understand that Federally recognized Tribes must be related to on a Government-to-Government basis. The 1997 Secretarial Order on Native Americans and the Act clearly states that Tribal lands should not be designated unless absolutely necessary for the conservation of the species. According to the Secretarial Order, "Critical habitat shall not be designated in an area that may impact Tribal trust resources unless it is determined essential to conserve a listed species. In designating critical habitat, the Services shall evaluate and document the extent to which the conservation needs of a listed species can be achieved by limiting the designation to other lands."

We determined that no Tribal lands are essential for any of the 18 plantsspecies for which critical habitat designation is proposed because none of these plants are known to occur on Tribal lands.

TABLE 6.—IMPACTS OF CRITICAL HABITAT DESIGNATION FOR 19 PLANTS FROM LANAI

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation[1]
Federal Activities Potentially Affected[2].	Activities conducted by the Army Corps of Engineers, Department of Transportation, Department of Defense, Department of Agriculture, Environmental Protection Agency, Federal Emergency Management Agency, Federal Aviation Administration.	Activities by these Federal Agencies in any unoccupied critical habitat areas.

TABLE 6.—IMPACTS OF CRITICAL HABITAT DESIGNATION FOR 19 PLANTS FROM LANAI—Continued

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation[1]
Private or other non-Federal Activities Potentially Affected[3].	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for these plants by mechanical, chemical, or other means (e.g., overgrazing, clearing, cutting native live trees and shrubs, water diversion, impoundment, groundwater pumping, road building, mining, herbicide application, recreational use etc.) or appreciably decrease habitat value or quality through indirect effects (*e.g.*, edge effects, invasion of exotic plants or animals, fragmentation of habitat).	Funding, authorization, or permitting actions by Federal Agencies in any unoccupied critical habitat areas.

[1] This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[2] Activities initiated by a Federal agency.
[3] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

4. Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

5. Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will only be affected to the extent that any Federal funds, permits or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

6. Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of these 18 plant species. Due to current public knowledge of the species protection, the existing Section 9 prohibitions both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions in areas of occupied critical habitat, we do not anticipate that property values will be affected by the critical habitat designations. Additionally, critical habitat designation does not preclude development of habitat conservation plans and issuance of incidental take permits. The landowner in areas that are included in the designated critical habitat will continue to have opportunity to utilize the property in ways consistent with State law and with the continued survival of the plant species.

7. Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by the 18 plant species would have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning, rather than waiting for case-by-case section 7 consultation to occur.

8. Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We propose to designate critical habitat in accordance with the provisions of the Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the 18 plant species.

9. Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements that requires OMB approval under the Paperwork Reduction Act.

10. National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act, as amended. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Pacific Islands Ecoregion Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are Christa Russell, Michelle Stephens, and Marigold Zoll of the Pacific Islands Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h) revise the entries for *Abutilon eremitopetalum, Bonamia menziesii, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Cyanea grimesiana* ssp. *grimesiana, Cyanea macrostegia ssp. gibsonii, Cyrtandra munroi, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hibiscus brackenridgei, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Portulaca sclerocarpa, Spermolepis hawaiiensis, Tetramolopium remyi*, and *Viola lanaiensis* under "FLOWERING PLANTS" and *Ctentitis squamigera* under "FERNS AND ALLIES" to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		
Abutilon eremitopetalum.	none	U.S.A. (HI)	Malvaceae-Mallow ..	E	435	17.96(a)	NA.
*	*	*	*	*	*		
Bonamia menziesii ..	none	U.S.A. (HI)	Convolvulaceae Morning glory.	E	559	17.96(a)	NA.
*	*	*	*	*	*		
Centaurium sebaeoides.	Awiwi	U.S.A. (HI)	Gentianaceae-Gentian.	E	448	17.96(a)	NA.
*	*	*	*	*	*		
Clermontia oblongifoli ssp.*mauiensis.*	Oha wai	U.S.A. (HI)	Campanulaceae-Bell flower.	E	467	17.96(a)	NA.
*	*	*	*	*	*		
Cyanea grimesiana ssp. *grimesiana.*	Haha	U.S.A. (HI)	Campanulaceae-Bell flower.	E	592	17.96(a)	NA.
*	*	*	*	*	*		
Cyanea macrostegia ssp. *gibsonii.*	none	U.S.A. (HI)	Campanulaceae-Bell flower.	E	592	17.96(a)	NA.
*	*	*	*	*	*		
Cyrtandra munroi	Haiwale	U.S.A. (HI)	Gesneriaceae-African violet.	E	467	17.96(a)	NA.
*	*	*	*	*	*		
Gahnia lanaiensis	none	U.S.A. (HI)	Cyperaceae-Sedge	E	435	17.96(a)	NA.
*	*	*	*	*	*		
Hedyotis mannii	Pilo	U.S.A. (HI)	Rubiaceae-Coffee ...	E	480	17.96(a)	NA.
*	*	*	*	*	*		
Hedyotis sclechtendahliana var. *remyi.*	Kopa	U.S.A. (HI)	Rubiaceae-Coffee ...	E	441	17.96(a)	NA.
*	*	*	*	*	*		
Hibiscus brackenridgei.	Mao hau hele	U.S.A. (HI)	Malvaceae-Mallow ..	E	559	17.96(a)	NA.
*	*	*	*	*	*		
Labordia tinifolia, var. *lanaiensis.*	Kamakahala	U.S.A. (HI)	Mallow Loganiaceae-Logania.	E	666	17.96(a)	NA.
*	*	*	*	*	*		
Melicope munroi	Alani	U.S.A. (HI)	Rutaceae-Rue	E	666	17.96(a)	NA.

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		
Portulaca sclerocarpa.	Poe	U.S.A. (HI)	Portulacaceae-Purslane.	E	432	17.96(a)	NA.
*	*	*	*	*	*		
Spermolepis hawaiiensis.	none	U.S.A. (HI)	Apiaceae-Parsley	E	559	17.96(a)	NA.
*	*	*	*	*	*		
Tetramaloplium remyi.	none	U.S.A. (HI)	Asteraceae-Sunflower.	E	435	17.96(a)	NA.
*	*	*	*	*	*		
Viola lanaiensis	none	U.S.A. (HI)	Violaceae-Violet	E	435	17.96(a)	NA.
*	*	*	*	*	*		
FERNS AND ALLIES							
*	*	*	*	*	*		
Ctenitis squamigera	Pauoa	U.S.A. (HI)	Aspleniaceae-Spleenwort.	E	553	17.96(a)	NA.
*	*	*	*	*	*		

3. In § 17.96, as proposed to be amended at 65 FR 66865, November 7, 2000, add introductory text to paragraph (a)(1)(i), add paragraph (a)(1)(i)(E), and revise paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B) to read as follows:

§ 17.96 Critical habitat-plants.

(a) * * *

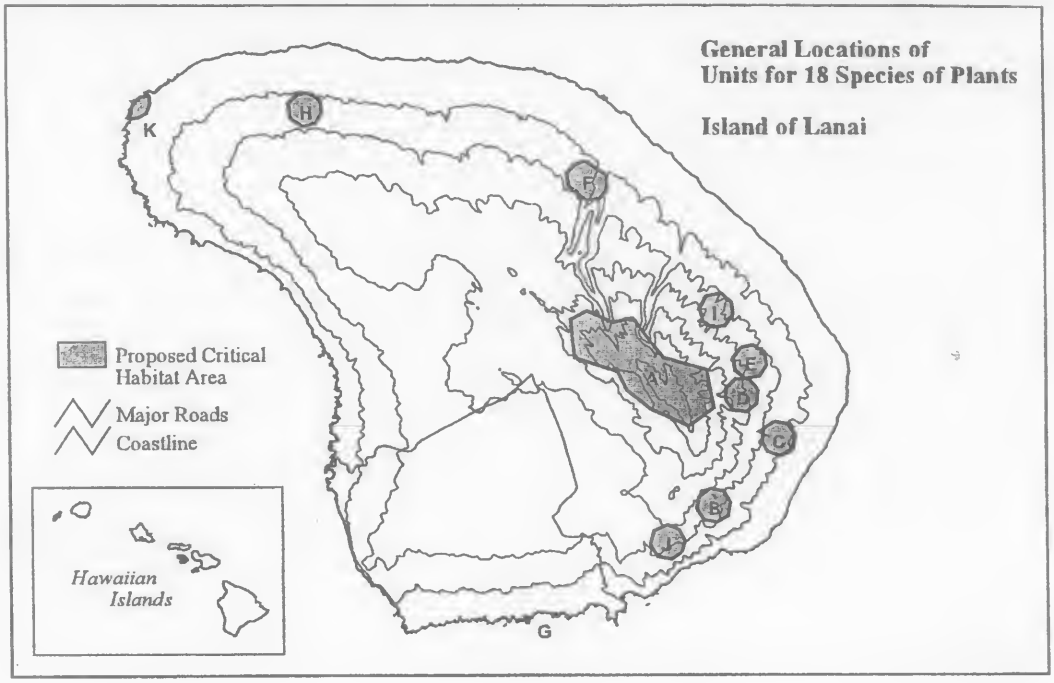
(1) * * *

(i) *Maps and critical habitat unit descriptions.* The following sections contain the legal descriptions of the critical habitat units designated for each of the Hawaiian islands. Existing features and structures within proposed areas, such as buildings, roads, aquaducts, telecommunication equipment, arboreta and gardens, heiaus (indigenous place of worship, shrine) and other man-made features do not contain, and are not likely to develop, the constituent elements described for each species in paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B) of this section. Therefore, these features or structures are not included in the critical habitat designation.

* * * * *

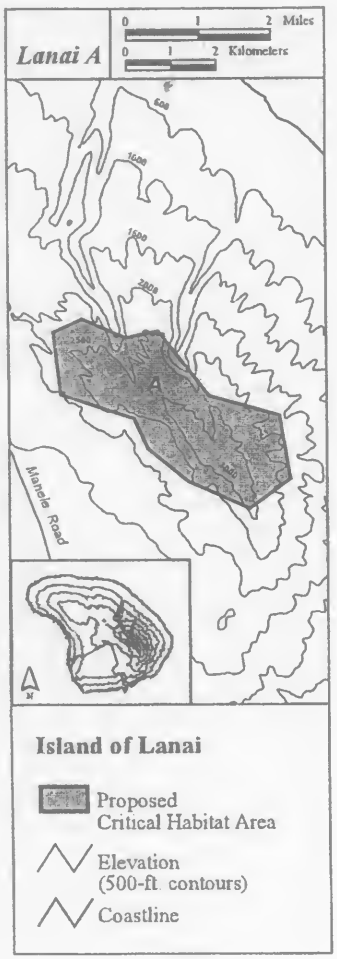
(E) *Lanai.* Critical habitat units are described below. Coordinates are in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). The following map shows the general locations of the 10 critical habitat units designated on the island of Lanai.

Note: Map follows:


General Locations of
Units for 18 Species of Plants
Island of Lanai
Proposed Critical
Habitat Area
Major Roads
Coastline
Hawaiian
Islands
K
H
F
I
E
A
D
C
B
J
G

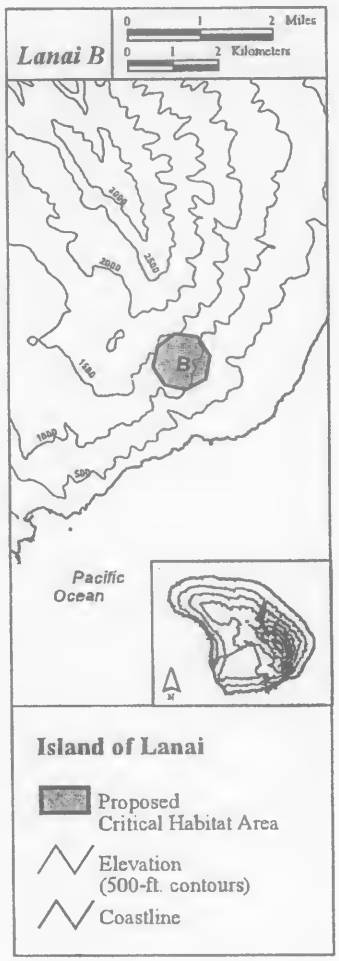
Critical Habitat Unit Lanai A: Area consists of the following twelve boundary points: 719712, 2305252; 720416, 2305409; 721551, 2303960; 723117, 2303521; 723365, 2302096; 722463, 2301441; 721071, 2302054; 720184, 2302791; 719869, 2303462; 718237, 2303992; 718088, 2305384; 718717, 2305682.

Note: Map follows:



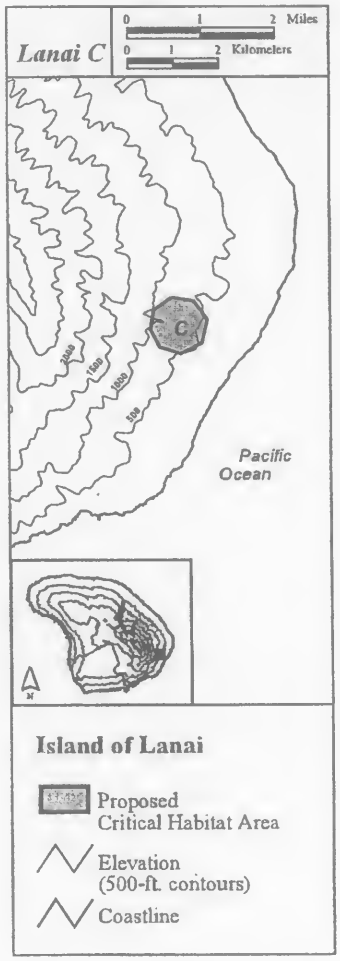
Critical Habitat Unit Lanai B: Area consists of the following eight boundary points: 723212, 2299127; 723720, 2299036; 723981, 2298623; 723882, 2298115; 723454, 2297882; 722989, 2297982; 722723, 2298390; 722832, 2298832.

Note: Map follows:



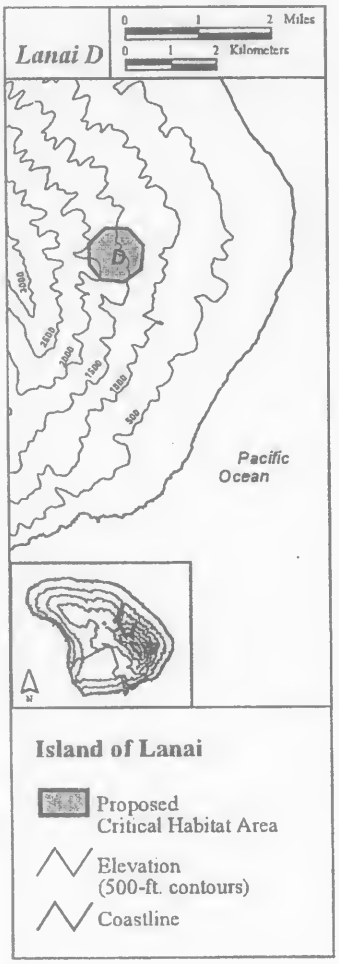
Critical Habitat Unit Lanai C: Area consists of the following eight boundary points: 725639, 2301587; 726128, 2301511; 726413, 2301098; 726299, 2300566; 725829, 2300338; 725373, 2300490; 725173, 2300870; 725244, 2301307.

Note: Map follows:



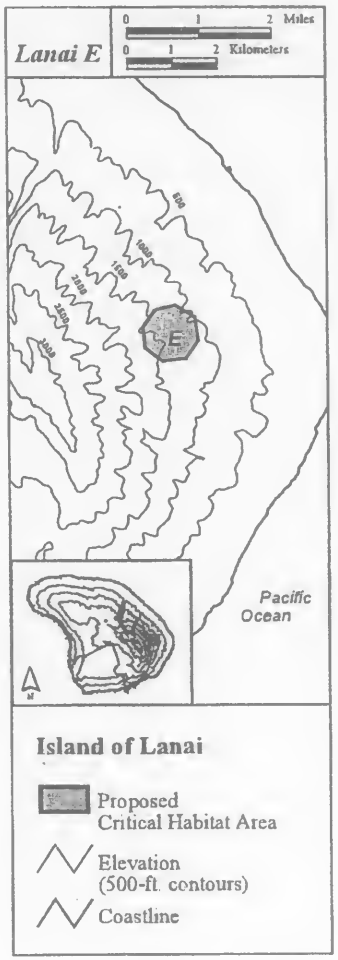
Critical Habitat Unit Lanai D: Area consists of the following eight boundary points: 724717, 2303155; 725040, 2302784; 724993, 2302257; 724598, 2301967; 724109, 2302029; 723848, 2302366; 723843, 2302827; 724204, 2303174.

Note: Map follows:



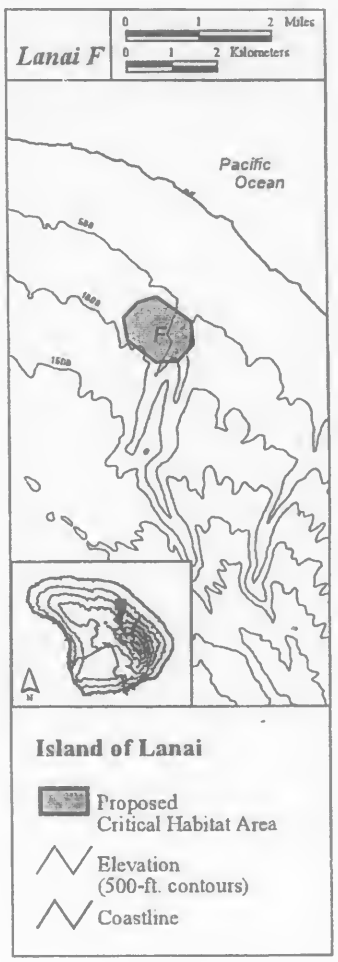
Critical Habitat Unit Lanai E: Area consists of the following eight boundary points: 724403, 2304342; 724854, 2304442; 725277, 2304171; 725353, 2303672; 725078, 2303269; 724560, 2303207; 724171, 2303501; 724128, 2303962.

Note: Map follows:



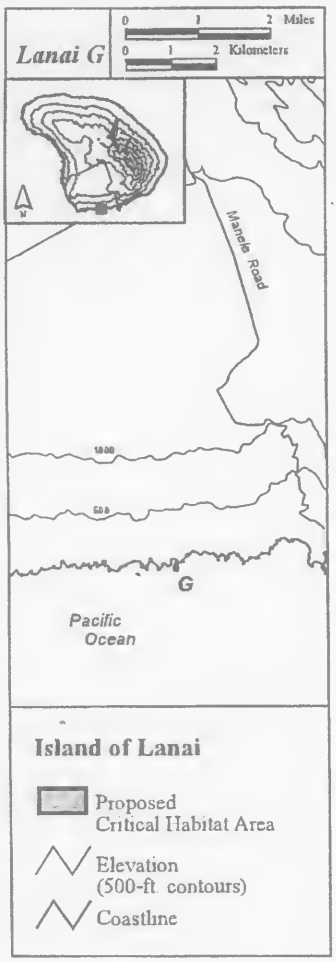
Critical Habitat Unit Lanai F: Area consists of the following eight boundary points: 718729, 2311275; 719495, 2310727; 719528, 2310199; 719189, 2309838; 718726, 2309815; 718081, 2310313; 718003, 2310809; 718302, 2311135.

Note: Map follows:



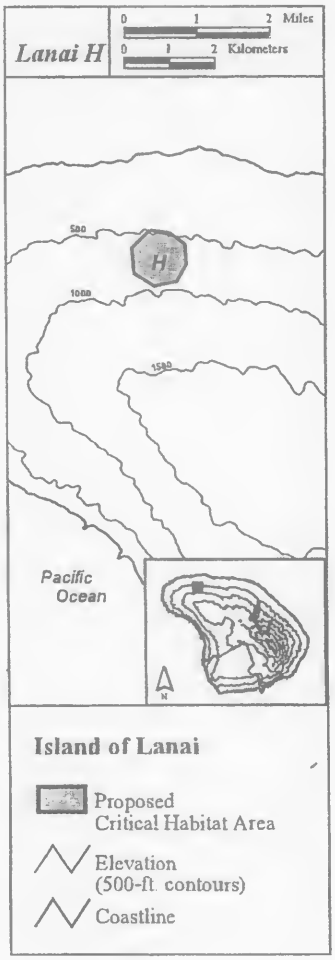
Critical Habitat Unit Lanai G: Area consists of the entire islet, located at UTM coordinate 716393, 2294193.

Note: Map follows:



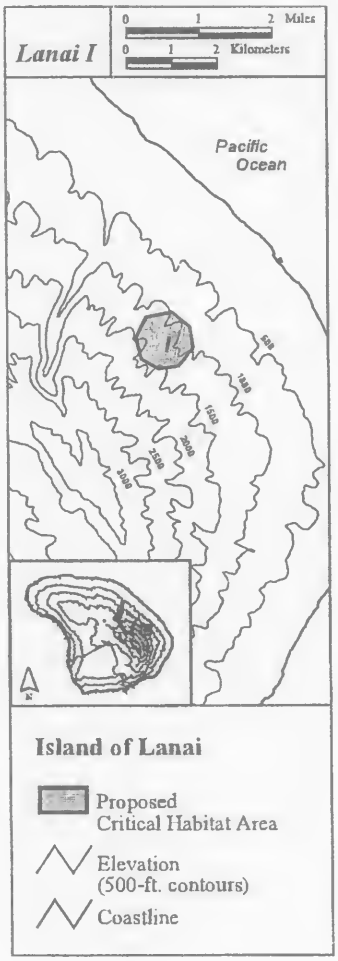
Critical Habitat Unit Lanai H: Area consists of the following eight boundary points: 708156, 2313789; 708625, 2313719; 708926, 2313485; 708965, 2313031; 708746, 2312649; 708254, 2312543; 707808, 2312824; 707750, 2313391.

Note: Map follows:



Critical Habitat Unit Lanai I: Area consists of the following eight boundary points: 724128, 2305536; 723819, 2305150; 723361, 2305089; 722997, 2305298; 722875, 2305767; 723096, 2306231; 723681, 2306330; 724062, 2306010.

Note: Map follows:



Critical Habitat Unit Lanai J: Area consists of the following eight points and the intermediate coastline: 702559, 2313776; 702658, 2313650; 702688, 2313348; 702566, 2313030; 702299, 2312864; 702063, 2312826; 701890, 2312877; 701888, 2312878.

Note: Map follows:

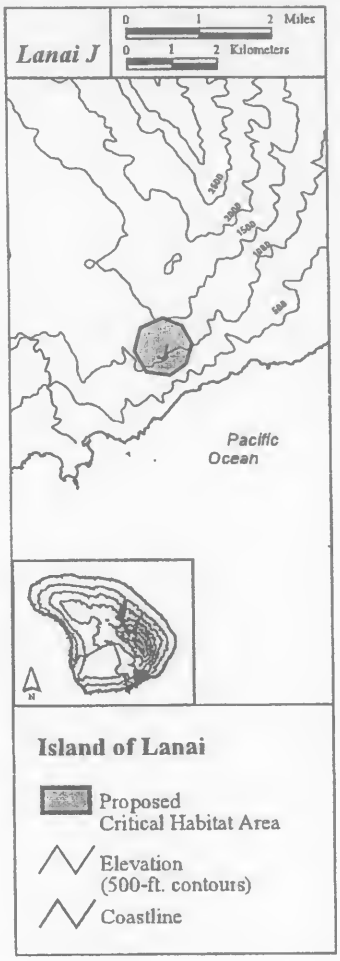


TABLE (A)(1)(i)(E)—PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR LANAI

Unit name	Species
Lanai A	*Clermontia oblongifolia* ssp. *mauiensis*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea macrostegia* ssp. *gibsonii*, *Cyrtandra munroi*, *Ctenitis squamigera*, *Gahnia lanaiensis*, *Hedyotis mannii*, *Hedyotis schlechtendahliana* var. *remyi*, *Labordia tinifolia* var. *lanaiensis*, *Melicope munroi*, and *Viola lanaiensis*.
Lanai B	*Spermolepis hawaiiensis*.
Lanai C	*Teramolopium remyi*.
Lanai D	*Bonamia menziesii*.
Lanai E	*Abutilon eremitopetalum*.
Lanai F	*Centaurium sebaeoides* and *Hibiscus brackenridgei*.
Lanai G	*Portulaca sclerocarpa*.
Lanai H	*Teramolopium remyi*.
Lanai I	*Spermolepis hawaiiensis*.
Lanai J	*Hibiscus brackenridgei*.

(ii) *Hawaiian plants—Constituent elements.*

(A) *Flowering plants.*

Family Apiaceae: *Peucedanum sandwicense* (makou)

Kaua'i F, G, I, and M, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Peucedanum sandwicense* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Cliff habitats (a) in mixed shrub coastal dry cliff communities or diverse mesic forest and (b) containing one or more of the following associated native plant

species: *Hibiscus kokio, Brighamia insignis, Bidens* sp., *Artemisia* sp., *Lobelia niihauensis, Wilkesia gymnoxiphium, Canthium odoratum, Dodonaea viscosa, Psychotria* sp., *Acacia koa, Kokio kauaiensis, Carex meyenii, Panicum lineale, Chamaesyce celastroides, Eragrostis* sp., *Diospyros* sp., or *Metrosideros polymorpha;* and (2) elevations from sea level to above 915 m (3,000 ft).

Family Apiaceae: *Spermolepis hawaiiensis* (No Common Name)

i. Kauai B and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Spermolepis hawaiiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha* forests or *Dodonaea viscosa* lowland dry shrubland containing one or more of the following associated plant species: *Eragrostis variabilis, Bidens sandvicensis, Schiedea spergulina, Lipochaeta* sp., *Cenchrus agrimonioides, Sida fallax, Doryopteris* sp., or *Gouania hillebrandii;* and (2) elevations of about 305 to 610 m (1,000 to 2,000 ft).

ii. Critical habitat on Lanai includes the Lanai units B, I, and J which are identified in the legal description in paragraph (a)(1)(i)(E) of this section. Within these units the primary constituent elements are the rocky, steep slopes containing ledges and pockets with one or more of the following associated native plant species: *Dodonea viscosa, Panicum* spp., *Heteropogon contortus, Lipochaeta lavarum,* or *Reyoldsia sandwicensis;* and elevations between 335 and 395 m (1,100 and 1,300 ft).

Family Apocynaceae: *Pteralyxia kauaiensis* (kaulu)

Kauai F, G, I, M, Q, T, and U, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Pteralyxia kauaiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Diverse mesic or wet forests containing one or more of the following associated plant taxa: *Pisonia sandwicensis, Euphorbia haeleeleana, Charpentiera elliptica, Pipturus* sp., *Neraudia kauaiensis, Hedyotis terminalis, Pritchardia* sp., *Gardenia remyi, Syzygium* sp., *Pleomele* sp., *Cyanea* sp., *Hibiscus* sp., *Kokia kauaiensis, Alectryon macrococcus, Canthium odoratum, Nestegis sandwicensis, Bobea timonioides, Rauvolfia sandwicensis, Nesoluma polynesicum, Myrsine lanaiensis, Caesalpinia kauaiensis, Tetraplasandra* sp., *Acacia koa, Styphelia tameiameiae, Dodonaea viscosa, Gahnia* sp., *Freycinetia arborea, Psychotria mariniana, Diplazium sandwichianum, Zanthoxylum dipetalum, Carex* sp., *Delissea* sp., *Xylosma hawaiiense, Alphitonia ponderosa, Santalum freycinetianum, Antidesma* sp., *Diospyros* sp., *Metrosideros polymorpha, Dianella sandwicensis, Poa sandwicensis, Schiedea stellarioides, Peperomia macraeana, Claoxylon sandwicense,* or *Pouteria sandwicensis;* and (2) elevations between 250 to 610 m (820 to 2,000 ft).

Family Araliaceae: *Munroidendron racemosum* (No Common Name)

Kauai G, I, M, and N, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Munroidendron racemosum* on Kauai. Within these units the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep exposed cliffs or ridge slopes (a) in coastal or lowland mesic forest and (b) containing one or more of the following associated plant taxa: *Pisonia umbellifera, Canavalia galeata, Sida fallax, Brighamia insignis, Canthium odoratum, Psychotria* sp., *Nestegis sandwicensis, Tetraplasandra* sp., *Bobea timonioides, Rauvolfia sandwicensis, Pleomele* sp., *Pouteria sandwicensis,* or *Diospyros* sp.; and (2) elevations between 120 to 400 m (395 to 1,310 ft).

Family Asteraceae: *Dubautia latifolia* (na'ena'e)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Dubautia latifolia* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Gentle or steep slopes on well drained soil in (a) semi-open or closed, diverse montane mesic forest dominated by *Acacia koa* and/or *Metrosideros polymorpha* and (b) containing one or more of the following native plant species: *Pouteria sandwicensis, Dodonaea viscosa, Nestegis sandwicensis, Diplazium sandwichianum, Elaeocarpus bifidus, Claoxylon sandwicense, Bobea* sp., *Pleomele* sp., *Antidesma* sp., *Cyrtandra* sp., *Xylosma* sp., *Alphitonia ponderosa, Coprosma waimeae, Dicranopteris linearis, Hedyotis terminalis, Ilex anomala, Melicope anisata, Psychotria mariniana,* or *Scaevola* sp.; and (2) elevations between 800 to 1,220 m (2,625 to 4,000 ft).

Family Asteraceae: *Dubautia pauciflorula* (na'ena'e)

Kauai L, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Dubautia pauciflorula* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) lowland wet forest within stream drainages; and (2) elevations between 670–700 m (2,200–2,300 ft).

Family Asteraceae: *Hesperomannia lydgatei* (No Common Name)

Kauai F, L, and P, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Hesperomannia lydgatei* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Stream banks with rich brown soil and silty clay (a) in *Metrosideros polymorpha* or *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest and (b) containing one or more of the following associated native plant species: *Adenophorus* sp., *Antidesma* sp., *Broussaisia arguta, Cheirodendron* sp., *Elaphoglossum* sp., *Freycinetia arborea, Hedyotis terminalis, Labordia lydgatei, Machaerina angustifolia, Peperomia* sp., *Pritchardia* sp., *Psychotria hexandra,* and *Syzygium sandwicensis;* and (2) elevations between 410–915 m (1,345–3,000 ft).

Family Asteraceae: *Lipochaeta fauriei* (nehe)

Kauai G, I, and U, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Lipochaeta fauriei* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Moderate shade to full sun on the sides of steep gulches (a) in diverse lowland mesic forests and (b) containing one or more of the following native species: *Diospyros* sp., *Myrsine lanaiensis, Euphorbia haeleeleana, Acacia koa, Pleomele aurea, Sapindus oahuensis, Nestegis sandwicensis, Dodonaea viscosa, Psychotria mariniana, Psychotria greenwelliae, Kokia kauaiensis,* or *Hibiscus waimeae;* and (2) elevations between 480 and 900 m (1,575 and 2,950 ft).

Family Asteraceae: *Lipochaeta micrantha* (nehe)

i. Kauai I and M, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Lipochaeta micrantha* on Kauai. Within these units the currently known primary constituent elements of critical habitat for *Lipochaeta micrantha* var. *exigua* are habitat components that provide: (1) Cliffs, ridges, or slopes (a) in grassy, shrubby or dry mixed communities and (b) containing one or more of the following associated native plant species: *Artemisia australis, Bidens sandvicensis, Plectranthus parviflorus, Chamaesyce celastroides, Diospyros* sp., *Canthium odoratum, Neraudia* sp., *Pipturus* sp., *Hibiscus kokio, Sida fallax, Eragrostis* sp., or *Lepidium bidentatum;* and (2) elevations between 305–430 m (1,000–1,400 ft).

ii. Within these units, the currently known primary constituent elements of critical habitat for *Lipochaeta micrantha* var. *micrantha* are habitat components that provide: (1) Basalt cliffs, stream banks, or level ground (a) in mesic or diverse *Metrosideros polymorpha—Diospyros* sp. forest and (b) containing one or more of the following associated native plant species: *Lobelia niihauensis, Chamaesyce celastroides* var. *hanapepensis, Neraudia kauaiensis, Rumex* sp., *Nontrichium* sp. (kului), *Artemisia* sp., *Dodonaea viscosa, Antidesma* sp., *Hibiscus* sp., *Xylosma* sp., *Pleomele* sp., *Melicope* sp., *Bobea* sp., and *Acacia koa;* and (2) elevations between 610–720 m (2,000–2,360 ft).

Family Asteraceae: *Lipochaeta waimeaensis* (nehe)

Kauai B, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Lipochaeta waimeaensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Precipitous, shrub-covered gulch (a) in diverse lowland forest and (b) containing the native species *Dodonaea viscosa* or *Lipochaeta connata;* and (2) elevations between 350 and 400 m (1,150 and 1,310 ft).

Family Asteraceae: *Remya kauaiensis* (No Common Name)

Kauai G, I, and U, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Remya kauaiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep, north or northeast facing slopes (a) in *Acacia koa—Metrosideros polymorpha* lowland mesic forest and (b) containing one or more of the following associated native plant species: *Chamaesyce* sp., *Nestegis sandwicensis, Diospyros* sp., *Hedyotis terminalis, Melicope* ssp., *Pouteria sandwicensis, Schiedea membranacea, Psychotria mariniana, Dodonaea viscosa, Dianella sandwicensis, Tetraplasandra kauaiensis,* or *Claoxylon sandwicensis;* and (2) elevations between 850 to 1,250 m (2,800 to 4,100 ft).

Family Asteraceae: *Remya montgomeryi* (No Common Name)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Remya montgomeryi* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep, north or northeast-facing slopes, cliffs, or stream banks near waterfalls (a) in *Metrosideros polymorpha* mixed mesic forest and (b) containing one or more of the following associated native plant species: *Lysimachia glutinosa, Lepidium serra, Boehmeria grandis, Poa mannii, Stenogyne campanulata, Myrsine linearifolia, Bobea timonioides, Ilex anomala, Zanthoxylum dipetalum, Claoxylon sandwicensis, Tetraplasandra* spp., *Artemisia* sp., *Nototrichium* sp., *Cyrtandra* sp., *Dubautia plantaginea, Sadleria* sp., *Cheirodendron* sp., *Scaevola* sp., or *Pleomele* sp.; and (2) elevations between 850 to 1,250 m (2,800 to 4,100 ft).

Family Asteraceae: *Tetramolopium remyi* (No Common Name)

Critical habitat includes the Lanai units C and H which are identified in paragraph (a)(1)(i)(E) of this section. Within these units the primary constituent elements are red sandy loam soil in dry *Dodonea viscosa-Heteropogon contortus* communities and including one or more of the following associated native plant species: *Bidens mauiensis, Waltheria indica, Wikstroemia oahuensis,* or *Lipochaeta lavarum;* and an elevation of about 230 m (755 ft).

Family Asteraceae: *Wilkesia hobdyi* (dwarf iliau)

Kauai G and J, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Wilkesia hobdyi* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Coastal dry cliffs or very dry ridges containing one or more of the following associated native plant species: *Artemisia* sp., *Wilkesia gymnoxiphium, Lipochaeta connata, Lobelia niihauensis, Peucedanum sandwicensis, Hibiscus kokio* ssp. *saint johnianus, Canthium odoratum, Peperomia* sp., *Myoporum sandwicense, Sida fallax, Waltheria indica, Dodonaea viscosa,* or *Eragrostis variabilis;* and (2) elevations between 275 to 400 m (900 to 1,310 ft).

Family Campanulaceae: *Brighamia insignis* ('olulu)

Kauai E, G, and M, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, and Niihau B, identified in the legal descriptions in paragraph (a)(1)(i)(B) of this section, constitute critical habitat for *Brighamia insignis* on Kauai and Niihau. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Rocky ledges with little soil or steep sea cliffs (a) in lowland dry grasslands or shrublands with annual rainfall that is usually less than 170 cm (65 in.) and (b) containing one or more of the following native plant species: *Artemisia* sp., *Chamaesyce celastroides, Canthium odoratum, Eragrostis variabilis, Heteropogon contortus, Hibiscus kokio, Hibiscus saintjohnianus, Lepidium serra, Lipochaeta succulenta, Munroidendron racemosum,* or *Sida fallax;* and (2) elevations between sea level to 480 m (1,575 ft) elevation.

Family Campanulaceae: *Clermontia oblongifolia* ssp. *mauiensis* (oha wai)

Critical habitat includes the Lanai unit A which is identified in paragraph (a)(1)(i)(E) of this section. Within this unit the primary constituent elements are the ridges in *Metrosideros polymorpha* dominated montane wet forest, and containing one or more of the following associated native plant species: *Coprosma* sp., *Clermontia* sp., *Hedyotis* sp., or *Melicope* sp.; and elevations between 800 and 900 m (2,625 and 2,950 ft).

Family Campanulaceae: *Cyanea asarifolia* (haha)

Kauai R and T, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Cyanea asarifolia* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Pockets of soil on sheer rock cliffs (a) in lowland wet forests and (b) containing one or more of the following

native plant species: *Hedyotis elatior, Machaerina angustifolia, Metrosideros polymorpha, Touchardia latifolia,* or *Urera glabra;* and (2) elevations between 330 to 730 m (1,080 to 2,400 ft).

Family Campanulaceae: *Cyanea grimesiana* ssp. *grimesiana* (haha)

Critical habitat includes the Lanai unit A which is identified in paragraph (a)(1)(i)(E) of this section. Within this unit the primary constituent elements are the rocky or steep slopes of stream banks in mesic *Metrosideros polymorpha* forest or *Metrosideros polymorpha—Acacia koa* forest, and containing one or more of the following associated native plant species: *Antidesma* sp., *Bobea* sp., *Myrsine* sp., *Nestegis sandwicensis, Psychotria* sp., or *Xylosma* sp.; and elevations between 350 and 945 m (1,150 and 3,100 ft).

Family Campanulaceae: *Cyanea macrostegia* ssp. *gibsonii* (No Common Name)

Critical habitat includes the Lanai unit A which is identified in paragraph (a)(1)(i)(E) of this section. Within this unit the primary constituent elements are the lower gulch slopes, gulch bottoms, and streambanks in lowland wet *Metrosideros polymorpha* forest or *Diplopterygium pinnatum-Metrosideros polymorpha* shrubland, and containing one or more of the following associated native plant species: *Dicranopteris linearis, Perrottetia sandwicensis, Scaevola chamissoniana, Pipturus* sp., *Antidesma* sp., *Freycinetia arborea, Psychotria* sp., *Cyrtandra* sp., *Broussaisia arguta, Cheirodendron* sp., *Clermontia* sp., *Dubautia* sp., *Hedyotis, Ilex anomala, Labordia* sp., *Melicope* sp., *Pneumatopteris* sp., or *Sadleria* sp.; and elevations between 760 and 970 m (2,490 and 3,180 ft).

Family Campanulaceae: *Cyanea recta* (haha)

Kauai K, O, P, and R, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Cyanea recta* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Gulches or slopes (a) in lowland wet or mesic *Metrosideros polymorpha* forest or shrubland and (b) containing one or more of the following native plant species: *Dicranopteris linearis, Psychotria* sp., *Antidesma* sp., *Cheirodendron platyphyllum, Cibotium* sp., or *Diplazium* sp.; and (2) elevations between 400 to 1,200 m (1,310 to 3,940 ft).

Family Campanulaceae: *Cyanea remyi* (haha)

Kauai L, P, R, and T, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Cyanea remyi* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Lowland wet forest or shrubland and containing one or more of the following native plant species: *Antidesma* sp., *Cheirodendron* sp., *Diospyros* sp., *Broussaisia arguta, Metrosideros polymorpha, Freycinetia arborea, Hedyotis terminalis, Machaerina angustifolia, Perrottetia sandwicensis, Psychotria hexandra,* or *Syzygium sandwicensis;* and (2) elevations between 360 to 930 m (1,180 to 3,060 ft).

Family Campanulaceae: *Cyanea undulata* (haha)

Kauai L, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Cyanea undulata* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Pristine, undisturbed sites along shady stream banks or steep to vertical slopes; and (2) elevations between 630 to 800 m (2,070 to 2,625 ft).

Family Campanulaceae: *Delissea rhytidosperma* (No Common Name)

Kauai F, G, and M, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Delissea rhytidosperma* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Well-drained soils with medium or fine-textured subsoil (a) in diverse lowland mesic forests or *Acacia koa* dominated lowland dry forests and (b) containing one or more of the following native species: *Euphorbia haeleeleana, Psychotria hobdyi, Pisonia* sp., *Pteralyxia* sp., *Dodonaea viscosa, Cyanea* sp., *Hedyotis* sp., *Dianella sandwicensis, Diospyros sandwicensis, Styphelia tameiameiae,* or *Nestegis sandwicensis;* and (2) elevations between 120 and 915 m (400 and 3,000 ft).

Family Campanulaceae: *Delissea rivularis* ('oha)

Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Delissea rivularis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes near streams (a) in *Metrosideros polymorpha—Cheirodendron trigynum* montane wet or mesic forest and (b) containing one or more of the following native plant species: *Broussaisia arguta, Carex* sp., *Coprosma* sp., *Melicope clusiifolia, M. anisata, Psychotria hexandra, Dubautia knudsenii, Diplazium sandwichianum, Hedyotis foggiana, Ilex anomala,* or *Sadleria* sp.; and (2) elevations between 1,100 to 1,220 m (3,610 to 4,000 ft).

Family Campanulaceae: *Delissea undulata* (No Common Name)

Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Delissea undulata* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) dry or mesic open *Sophora chrysophylla-Metrosideros polymorpha* forests containing one or more of the following native plant species: *Diospyros sandwicensis, Dodonaea viscosa, Psychotria mariniana, P. greenwelliae, Santalum ellipticum, Nothocestrum breviflorum,* or *Acacia koa;* and (2) elevations between 610–1,740 m (2,000–5,700 ft).

Family Campanulaceae: *Lobelia niihauensis* (No Common Name)

Kauai F, G, I, and J, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Lobelia niihauensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Exposed mesic mixed shrubland or coastal dry cliffs containing one or more of the following associated native plant species: *Eragrostis* sp., *Bidens* sp., *Plectranthus parviflorus, Lipochaeta* sp., *Lythrum* sp., *Wilkesia hobdyi, Hibiscus kokio* ssp. *saint johnianus, Nototrichium* sp., *Schiedea apokremnos, Chamaesyce celastroides, Charpentiera* sp., or *Artemisia* sp.; and (2) elevations between 100 to 830 m (330 to 2720 ft).

Family Caryophyllaceae: *Alsinidendron lychnoides* (kuawawaenohu)

Kauai G and H, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Alsinidendron lychnoides* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Montane wet forests (a) dominated by *Metrosideros polymorpha* and *Cheirodendron* sp., or by

Metrosideros polymorpha and *Dicranopteris linearis* and (b) containing one or more of the following native plant species: *Carex* sp., *Cyrtandra* sp., *Machaerina* sp., *Vaccinium* sp., *Peperomia* sp., *Hedyotis terminalis, Astelia* sp., or *Broussaisia arguta;* and (2) elevations between 1,100 and 1,320 m (3,610 and 4,330 ft).

Family Caryophyllaceae: *Alsinidendron viscosum* (No Common Name)

Kauai I, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Alsinidendron viscosum* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes (a) in *Acacia koa-Metrosideros polymorpha* lowland, montane mesic, or wet forest and (b) containing one or more of the following native plant species: *Alyxia olivaeformis, Bidens cosmoides, Bobea* sp., *Carex* sp., *Coprosma* sp., *Dodonaea viscosa, Gahnia* sp., *Ilex anomala, Melicope* sp., *Pleomele* sp., *Psychotria* sp., or *Schiedea stellarioides;* and (2) elevations between 820 and 1,200 m (2,700 and 3,940 ft).

Family Caryophyllaceae: *Schiedea apokremnos* (ma'oli'oli)

Kauai G and J, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Schiedea apokremnos* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Crevices of near-vertical coastal cliff faces (a) in sparse dry coastal shrub vegetation and (b) containing one or more of the following associated native plant species: *Heliotropium* sp., *Chamaesyce* sp., *Bidens* sp., *Artemisia australis, Lobelia niihauensis, Wilkesia hobdyi, Lipochaeta connata, Myoporum sandwicense, Canthium odoratum,* or *Peperomia* sp.; and (2) elevations between 60 to 330 m (200 to 1,080 ft).

Family Caryophyllaceae: *Schiedea helleri* (No Common Name)

Kauai I, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Schiedea helleri* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Ridges and steep cliffs (a) in closed *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, or *Metrosideros polymorpha-Cheirodendron* sp. montane wet forest, or *Acacia koa-Metrosideros polymorpha* montane mesic forest. and (b) containing one or more of the following associated native plant species: *Dubautia raillardioides, Scaevola procera, Hedyotis terminalis, Syzygium sandwicensis, Melicope clusifolia, Cibotium* sp., *Broussaisia arguta, Cheirodendron* sp., *Cyanea hirtella, Dianella sandwicensis, Viola wailenalenae,* or *Poa sandvicensis;* and (2) elevations between 1,065–1,100 m (3,490–3,610 ft).

Family Caryophyllaceae: *Schiedea kauaiensis* (No Common Name)

Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Schiedea kauaiensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes (a) in diverse mesic or wet forest and (b) containing one or more of the following associated plant taxa: Psychotria mariniana, *Psychotria hexandra, Canthium odoratum, Pisonia* sp., *Microlepia speluncae, Exocarpos luteolus, Diospyros* sp., *Peucedanum sandwicense,* or *Euphorbia haeleeleana;* and (2) elevations between 680–790 m (2,230–2,590 ft).

Family Caryophyllaceae: *Schiedea membranacea* (No Common Name)

Kauai G, I, and K, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Schiedea membranacea* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Cliffs or cliff bases (a) in mesic or wet habitats, (b) in lowland, or montane shrubland, or forest communities dominated by *Acacia koa, Pipturus* sp. or *Metrosideros polymorpha* and (c) containing one or more of the following associated native plant species: *Hedyotis terminalis, Melicope* sp., *Pouteria sandwicensis, Poa mannii, Hibiscus waimeae, Psychotria mariniana, Canthium odoratum, Pisonia* sp., *Perrottetia sandwicensis, Scaevola procera, Sadleria cyatheoides, Diplazium sandwicensis, Thelypteris sandwicensis, Boehmeria grandis, Dodonaea viscosa, Myrsine* sp., *Bobea brevipes, Alyxia olivaeformis, Psychotria greenwelliae, Pleomele* sp., *Alphitonia ponderosa, Joinvillea ascendens* ssp. *ascendens, Athyrium sandwichianum, Machaerina angustifolia, Cyrtandra paludosa, Touchardia latifolia, Thelypteris cyatheoides, Lepidium serra, Eragrostis variabilis, Remya kauaiensis, Lysimachia kalalauensis, Labordia helleri, Mariscus pennatiformis, Asplenium praemorsum,* or *Poa sandvicensis;* and (2) elevations between 520 and 1,160 m (1,700 and 3,800 ft).

Family Caryophyllaceae: *Schiedea nuttallii* (No Common Name)

Kauai M, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Schiedea nuttallii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) diverse lowland mesic forest, often with *Metrosideros polymorpha* dominant, containing one or more of the following associated native plant species: *Antidesma* sp, *Psychotria* sp., *Perrottetia sandwicensis, Pisonia* sp., or *Hedyotis acuminata;* and (2) elevations between 415 and 790 m (1,360 and 2,590 ft).

Family Caryophyllaceae: *Schiedea spergulina* var. *leiopoda* (No Common Name)

Kauai C, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Schiedea spergulina* var. *leiopoda* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases (a) in diverse lowland mesic forests and (b) containing one or more of the following native plants: *Bidens sandvicensis, Doryopteris* sp., *Peperomia leptostachya,* or *Plectranthus parviflorus;* and (2) elevations between 180 and 800 m (590 and 2,625 ft).

Family Caryophyllaceae: *Schiedea spergulina* var. *spergulina* (No Common Name)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Schiedea spergulina* var. *spergulina* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Bare rock outcrops or sparsely vegetated portions of rocky cliff faces or cliff bases (a) in diverse lowland mesic forests and (b) containing one or more of the following associated plant taxa: *Heliotropium* sp., or *Nototrichium sandwicense;* and (2) elevations between 180 and 800 m (590 and 2,625 ft).

Family Caryophyllaceae: *Schiedea stellarioides* (laulihilihi (=ma'oli'oli))

Kauai I, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Schiedea stellarioides* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes (a) in closed *Acacia koa-Metrosideros polymorpha* lowland or montane mesic forest or shrubland and (b) containing one or more of the following native plant species: *Nototrichium* sp., *Artemisia* sp., *Dodonaea viscosa, Melicope* sp., *Dianella sandwicensis, Bidens cosmoides, Mariscus* sp., or *Styphelia tameiameiae;* and (2) elevations between 610 and 1,120 m (2,000 and 3,680 ft).

Family Convolvulaceae: *Bonamia menziesii* (No Common Name)

i. Kauai G and L, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Bonamia menziesii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Dry, mesic or wet forests containing one or more of the following native plant species: *Metrosideros polymorpha, Canthium odoratum, Dianella sandwicensis, Diospyros sandwicensis, Dodonaea viscosa, Hedyotis terminalis, Melicope anisata, Melicope barbigera, Myoporum sandwicense, Nestegis sandwicense, Pisonia* sp., *Pittosporum* sp., *Pouteria sandwicensis,* or *Sapindus oahuensis;* and (2) elevations between 150 and 850 m (500 and 2,800 ft).

ii. Critical habitat on Lanai includes the Lanai unit D which is identified in paragraph (a)(1)(i)(E) of this section. Within this unit the primary constituent elements are the dry *Nestegis sandwicensis-Diospyros sp.* forest or dry *Dodonea viscosa* shrubland containing one or more of the following associated native plant species: *Bobea* sp., *Nesoluma polynesicum, Erythrina sandwicensis, Rauvolfia sandwicensis, Metrosideros polymorpha, Canthium odoratum, Dianella sandwicensis, Diospyros sandwicensis, Hedyotis terminalis, Melicope anisata, Melicope barbigera, Myoporum sandwicense, Pisonia* sp., *Pittosporum* sp., *Pouteria sandwicensis,* or *Sapindus oahuensis;* and elevations between 150 and 853 m (490 and 2,800 ft).

Family Cyperaceae: *Cyperus trachysanthos* (pu'uka'a)

Kauai G, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, and Niihau A, identified in the legal descriptions in paragraph (a)(1)(i)(B) of this section, constitute critical habitat for *Cyperus trachysanthos* on Kauai and Niihau. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Wet sites (mud flats, wet clay soil, or wet cliff seeps) (a) on coastal cliffs or talus slopes and (b) containing the native plant species *Hibiscus tiliaceus;* and (2) elevations between 3 and 160 m (10 and 525 ft).

Family Cyperaceae: *Gahnia lanaiensis* (No Common Name)

Critical habitat includes the Lanai unit A which is identified in paragraph (a)(1)(i)(E) of this section. Within this unit the primary constituent elements are the flat to gentle ridgecrest topography in lowland wet forest (shrubby rainforest to open scrubby fog belt or degraded lowland mesic forest), wet *Diplopterygium pinnatum-Dicranopteris linearis-Metrosideros polymorpha* shrubland or wet *Metrosideros polymorpha-Dicranopteris linearis* shrubland, and containing one or more of the following associated native plant species: *Doodia* sp., *Odontosoria chinensis, Ilex anomala, Hedyotis terminalis, Sadleria* sp., *Coprosma* sp., *Lycopodium* sp., *Scaevola* sp., or *Styphelia tameiameiae;* and elevations between 915 and 1,030 m (3,000 and 3,380 ft).

Family Euphorbiaceae: *Chamaesyce halemanui* (No Common Name)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Chamaesyce halemanui* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes of gulches (a) in mesic *Acacia koa* forests and (b) containing one or more of the following native plant species: *Metrosideros polymorpha, Alphitonia ponderosa, Antidesma platyphyllum, Bobea brevipes, Cheirodendron trigynum, Coprosma* sp., *Diospyros sandwicensis, Dodonaea viscosa, Elaeocarpus bifidus, Hedyotis terminalis, Kokia kauaiensis, Melicope haupuensis, Pisonia* sp., *Pittosporum* sp., *Pleomele aurea, Psychotria mariniana, Psychotria greenwelliae, Pouteria sandwicensis, Santalum freycinetianum,* or *Styphelia tameiameiae;* and (2) elevations between 660 to 1,100 m (2,165 to 3,610 ft).

Family Euphorbiaceae: *Euphorbia haeleeleana* ("akoko)

Kauai G, I, and U, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Euphorbia haeleeleana* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Lowland mixed mesic or dry forest that (a) is often dominated by *Metrosideros polymorpha, Acacia koa,* or *Diospyros* sp. and (b) containing one or more of the following native plant species: *Acacia koaia, Antidesma platyphyllum, Claoxylon* sp., *Carex meyenii, Carex wahuensis, Diplazium sandwichianum, Dodonaea viscosa, Erythrina sandwicensis, Kokia kauaiensis, Pleomele aurea, Psychotria mariniana, P. greenwelliae, Pteralyxia sandwicensis, Rauvolfia sandwicensis, Reynoldsia sandwicensis, Sapindus oahuensis, Tetraplasandra kauaiensis, Pouteria sandwicensis, Pisonia sandwicensis,* or *Xylosma* sp.; and (2) elevations between 205 and 670 m (680 and 2,200 ft).

Family Euphorbiaceae: *Flueggea neowawraea* (mehamehame)

Kauai F, G, and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Flueggea neowawraea* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Dry or mesic forests containing one or more of the following native plant species: *Alectryon macrococcus, Bobea timonioides, Charpentiera* sp., *Caesalpinia kauaiense, Hibiscus* sp., *Melicope* sp., *Metrosideros polymorpha, Myrsine lanaiensis, Munroidendron racemosum, Tetraplasandra* sp., *Kokia kauaiensis, Isodendrion* sp., *Pteralyxia kauaiensis, Psychotria mariniana, Diplazium sandwichianum, Freycinetia arborea, Nesoluma polynesicum, Diospyros* sp., *Antidesma pulvinatum, A. platyphyllum, Canthium odoratum, Nestegis sandwicensis, Rauvolfia sandwicensis, Pittosporum* sp., *Tetraplasandra* sp., *Pouteria sandwicensis, Xylosma* sp., *Pritchardia* sp., *Bidens* sp., or *Streblus pendulinus;* and (2) elevations of 250 to 1,000 m (820 to 3,280 ft).

Family Fabaceae: *Sesbania tomentosa* ('ohai)

Kauai J, identified in the legal description in paragraph (a)(1)(i)(A) of

this section, constitutes critical habitat for *Sesbania tomentosa* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Sandy beaches, dunes, soil pockets on lava, or pond margins (a) in coastal dry shrublands, or open *Metrosideros polymorpha* forests, or mixed coastal dry cliffs, and (b) containing one or more of the following associated native plant species: *Sida fallax, Heteropogon contortus, Myoporum sandwicense, Sporobolus virginicus, Scaevola sericea,* or *Dodonaea viscosa;* and (2) elevations between sea level and 12 m (0 and 40 ft).

Family Fabaceae: *Vigna o-wahuensis* (No common name)

The currently known primary constituent elements of critical habitat for *Vigna o-wahuensis* on Lanai are unknown.

Family Flacourtiaceae: Xylosma crenatum (No Common Name)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Xylosma crenatum* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Diverse *Acacia koa-Metrosideros polymorpha* montane mesic forest, or *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, or *Acacia koa-Metrosideros polymorpha* montane wet forest, and containing one or more of the following associated native plant species: *Tetraplasandra kauaiensis, Hedyotis terminalis, Pleomele aurea, Ilex anomala, Claoxylon sandwicense, Myrsine alyxifolia, Nestegis sandwicensis, Streblus pendulinus, Psychotria* sp., *Diplazium sandwichianum, Pouteria sandwicensis, Scaevola procera, Coprosma* sp., *Athyrium sandwichianum, Touchardia latifolia, Dubautia knudsenii, Cheirodendron* sp., *Lobelia yuccoides, Cyanea hirta, Poa sandwicensis,* or *Diplazium sandwichianum;* and (2) elevations between 975 to 1,065 m (3,200 to 3,4900 ft).

Family Gentianaceae: *Centaurium sebaeoides* ('awiwi)

i. Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Centaurium sebaeoides* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Volcanic or clay soils or cliffs (a) in arid coastal areas and (b) containing one or more of the following native plant species; *Artemisia* sp., *Bidens* sp., *Chamaesyce celastroides, Dodonaea viscosa, Fimbristylis cymosa, Heteropogon contortus, Jaquemontia ovalifolia, Lipochaeta succulenta, Lipochaeta heterophylla, Lipochaeta integrifolia, Lycium sandwicense, Lysimachia mauritiana, Mariscus phloides, Panicum fauriei, P. torridum, Scaevola sericea, Schiedea globosa, Sida fallax,* or *Wikstroemia uva-ursi;* and (2) elevations above 250 m (800 ft).

ii. Critical habitat on Lanai includes the Lanai unit F which is identified in paragraph (a)(1)(i)(E) of this section. Within this unit the primary constituent elements are the dry ledges which may or may not contain *Hibiscus brackenridgei;* and an elevation around 210 m (690 ft).

Family Gesneriaceae: *Cyrtandra cyaneoides* (mapele)

Kauai K, P, and R, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Cyrtandra cyaneoides* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes or cliffs near streams or waterfalls—(a) in lowland or montane wet forest or shrubland dominated by *Metrosideros polymorpha* or a mixture of *Metrosideros polymorpha* and *Dicranopteris linearis* and (b) containing one or more of the following native species: *Perrottetia sandwicensis, Pipturus* sp., *Bidens* sp., *Psychotria* sp., *Pritchardia* sp., *Freycinetia arborea, Cyanea* sp., *Cyrtandra limahuliensis, Diplazium sandwichianum, Gunnera* sp., *Coprosma* sp., *Stenogyne* sp., *Machaerina* sp., *Boehmeria grandis, Pipturus* sp., *Cheirodendron* sp., *Hedyotis terminalis,* or *Hedyotis tryblium;* and (2) elevations between 550 and 1,220 meter (1,800 and 4,000 ft).

Family Gesneriaceae: *Cyrtandra limahuliensis* (ha'iwale)

Kauai A, F, K, L, O, P, Q, R, and T, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Cyrtandra limahuliensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Stream banks (a) in lowland wet forests and (b) containing one or more of the following native plant species: *Antidesma* sp., *Cyrtandra kealiea, Pisonia* sp., *Pipturus* sp., *Cibotium glaucum, Eugenia* sp, *Hedyotis terminalis, Dubautia* sp., *Boehmeria grandis, Touchardia latifolia, Bidens* sp., *Hibiscus waimeae, Charpentiera* sp., *Urera glabra, Pritchardia* sp., *Cyanea* sp., *Perrottetia sandwicensis, Metrosideros polymorpha, Dicranopteris linearis, Gunnera kauaiensis,* or *Psychotria* sp.; and (2) elevations between 245 and 915 m (800 and 3,000 ft).

Family Gesneriaceae: *Cyrtandra munroi* (ha iwale)

Critical habitat includes the Lanai unit A which is identified in paragraph (a)(1)(i)(E) of this section. Within this unit the primary constituent elements are rich, moist to wet, moderately steep talus slopes in diverse mesic forest, wet *Metrosideros polymorpha* forest, or mixed mesic *Metrosideros polymorpha* forest, and containing one or more of the following associated native plant species: *Diplopterygium pinnatum, Diospyros* sp., *Metrosideros polymorpha, Hedyotis acuminata, Clermontia* sp., *Alyxia oliviformis, Bobea* sp., *Coprosma* sp., *Dicranopteris linearis, Freycinetia arborea, Melicope* sp., *Myrsine* sp., *Perrottetia sandwicensis, Pipturus* sp., *Pittosporum* sp., *Pleomele* sp., *Pouteria sandwicensis, Psychotria* sp., *Sadleria* sp., *Scaevola* sp., *Xylosma* sp., or other *Cyrtandra* sp.; and elevations between 300 and 920 m (980 and 3,020 ft).

Family Lamiaceae: *Phyllostegia knudsenii* (No Common Name)

Kauai I, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Phyllostegia knudsenii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha* lowland mesic or wet forest containing one or more of the following associated native plant species: *Perrottetia sandwicensis, Cyrtandra kauaiensis, Cyrtandra paludosa, Elaeocarpus bifidus, Claoxylon sandwicensis, Cryptocarya mannii, Ilex anomala, Myrsine linearifolia, Bobea timonioides, Selaginella arbuscula, Diospyros* sp., *Zanthoxylum dipetalum, Pittosporum* sp., *Tetraplasandra* spp., *Pouteria sandwicensis,* or *Pritchardia minor;* and (2) elevations between 865–975 m (2,840–3,200 ft).

Family Lamiaceae: *Phyllostegia wawrana* (No Common Name)

Kauai G, I, and R, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Phyllostegia wawrana* on Kauai. Within these units, the currently known primary constituent

elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha* dominated lowland or montane wet or mesic forest with (a) *Cheirodendron* sp. or *Dicranopteris linearis* as co-dominants, and (b) containing one or more of the following associated native plant species: *Delissea rivularis, Diplazium sandwichianum, Vaccinium* sp., *Broussaisia arguta, Myrsine lanaiensis, Psychotria* sp., *Dubautia knudsenii, Scaevola procera, Gunnera* sp., *Pleomele aurea, Claoxylon sandwicense, Elaphoglossum* sp., *Hedyotis* sp., *Sadleria* sp., and *Syzygium sandwicensis;* and (2) elevations between 780–1,210 m (2,560–3,920 ft).

Family Lamiaceae: *Stenogyne campanulata* (No Common Name)

Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Stenogyne campanulata* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Rock faces of nearly vertical, north-facing cliffs (a) in diverse lowland or montane mesic forest and (b) containing one or more of the following associated native plant species: *Heliotropium* sp., *Lepidium serra, Lysimachia glutinosa, Perrottetia sandwicensis,* or *Remya montgomeryi;* and (2) an elevation of 1,085 m (3,560 ft).

Family Loganiaceae: *Labordia lydgatei* (kamakahala)

Kauai F, K, L, P, R, and T, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Labordia lydgatei* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest containing one or more of the following associated native plant species: *Psychotria* sp., *Hedyotis terminalis* sp., *Cyanea* sp., *Cyrtandra* sp., *Labordia hirtella, Antidesma platyphyllum* var. *hillebrandii, Syzygium sandwicensis, Ilex anomala,* or *Dubautia knudsenii;* and (2) elevations between 635 and 855 m (2,080 to 2,800 ft).

Family Loganiaceae: *Labordia tinifolia* var. *lanaiensis* (kamakahala)

Critical habitat includes the Lanai unit A which is identified in paragraph (a)(1)(i)(E) of this section. Within this unit the primary constituent elements are the lowland mesic forest with one or more of the following associated native plants: *Dicranopteris linearis* or *Scaevola chamissoniana;* and elevations between 710 and 1,020 m (2,330 and 3,345 ft).

Family Loganiaceae: *Labordia tinifolia* var. *wahiawaensis* (kamakahala)

Kauai L, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Labordia tinifolia* var. *wahiawaensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Streambanks (a) in lowland wet forests dominated by *Metrosideros polymorpha* and (b) containing one or more of the following associated species: *Cheirodendron* sp., *Dicranopteris linearis, Cyrtandra* sp, *Antidesma* sp., *Psychotria* sp., *Hedyotis terminalis,* or *Athyrium microphyllum;* and (2) elevations between 300 to 920 m (985 to 3,020 ft).

Family Malvaceae: *Abutilon eremitopetalum* (No Common Name)

Critical habitat includes the Lanai unit E which is identified in paragraph (a)(1)(i)(E) of this section. Within this unit the primary constituent elements are the moderately steep north-facing slopes with red sandy soil and rock in lowland dry *Erythrina sandwicensis-Diospyros ferrea* forest and containing one or more of the following native plant taxa: *Canthium odoratum, Dodonaea viscosa, Nesoluma polynesicum, Rauvolfia sandwicensis, Sida fallax,* or *Wikstroemia* sp.; and elevations between 210 and 520 m (690 and 1,700 ft).

Family Malvaceae: *Hibiscadelphus woodii* (hau kuahiwi)

Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Hibiscadelphus woodii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Basalt talus or cliff walls (a) in *Metrosideros polymorpha* montane mesic forest and (b) containing one or more of the following associated native plant species: *Bidens sandwicensis, Artemisia australis, Melicope pallida, Dubautia* sp., *Lepidium serra, Lipochaeta* sp., *Lysimachia glutinosa, Carex meyenii, Chamaesyce celastroides* var. *hanapepensis, Hedyotis* sp., *Nototrichium* sp., *Panicum lineale, Myrsine* sp., *Stenogyne campanulata, Lobelia niihauensis,* or *Poa mannii;* and (2) elevations around 915 m (3,000 ft).

Family Malvaceae: *Hibiscus brackenridgei* (mao hau hele)

Critical habitat includes the Lanai units F and J which are identified in paragraph (a)(1)(i)(E) of this section. Within this unit the primary constituent elements are the lowland dry to mesic forest and shrubland containing one or more of the following associated native plant species: *Dodonea viscosa, Canthium odoratum, Eurya sandwicensis, Isachne distichophylla,* or *Sida fallax;* and elevations between sea level and 800 m (2,625 ft).

Family Malvaceae: *Hibiscus clayi* (Clay's hibiscus)

Kauai N, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Hibiscus clayi* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Slopes (a) in *Acacia koa* or *Diospyros* sp. -*Pisonia* sp.-*Metrosideros polymorpha* lowland dry or mesic forest and (b) containing one or more of the following associated native plant species: *Hedyotis acuminata, Pipturus* sp., *Psychotria* sp., *Cyanea hardyi, Artemisia australis,* or *Bidens* sp.; and (2) elevations between 230 to 350 m (750 to 1,150 ft).

Family Malvaceae: *Hibiscus waimeae* ssp. *hannerae* (koki'o ke'oke'o)

Kauai F, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Hibiscus waimeae* ssp. *hannerae* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha-Dicranopteris linearis* or *Pisonia* sp.-*Charpentiera elliptica* lowland wet or mesic forest and containing one or more of the following associated native plant species: *Antidesma* sp., *Psychotria* sp., *Pipturus* sp., *Bidens* sp., *Bobea* sp., *Sadleria* sp., *Cyrtandra* sp., *Cyanea* ssp. *Cibotium* sp., *Perrottetia sandwicensis,* or *Syzygium sandwicensis;* and (2) elevations between 190 and 560 m (620 and 1,850 ft).

Family Malvaceae: *Kokia kauaiensis* (koki'o)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Kokia kauaiensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Diverse mesic forest containing one or more of the following

associated native plant species: *Acacia koa, Metrosideros polymorpha, Bobea* sp., *Diospyros sandwicensis, Hedyotis* sp., *Pleomele* sp., *Pisonia* sp., *Xylosma* sp., *Isodendrion* sp., *Syzygium sandwicensis, Antidesma* sp., *Alyxia olivaeformis, Pouteria sandwicensis, Streblus pendulinus, Canthium odoratum, Nototrichium* sp., *Pteralyxia kauaiensis, Dicranopteris linearis, Hibiscus* sp., *Flueggea neowawraea, Rauvolfia sandwicensis, Melicope* sp., *Diellia laciniata, Tetraplasandra* sp., *Chamaesyce celastroides, Lipochaeta fauriei, Dodonaea viscosa, Santalum* sp., *Claoxylon* sp., or *Nestegis sandwicensis*; and (2) elevations between 350–660 m (1,150–2,165 ft).

Family Myrsinaceae: *Myrsine linearifolia* (kolea)

Kauai F, G, H, I, L, and P, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Myrsine linearifolia* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) diverse mesic or wet lowland or montane *Metrosideros polymorpha* forest with (a) *Cheirodendron* sp. or *Dicranopteris linearis* as co-dominants, and (b) containing one or more of the following associated native plant species: *Dubautia* sp., *Cryptocarya mannii, Sadleria pallida, Myrsine* sp., *Syzygium sandwicensis, Machaerina angustifolia, Freycinetia arborea, Hedyotis terminalis, Cheirodendron* sp., *Bobea brevipes, Nothocestrum* sp., *Melicope* sp., *Eurya sandwicensis, Psychotria* sp., *Lysimachia* sp., *or native ferns*; and (2) elevations between 585 to 1,280 m (1,920 to 4,200 ft).

Family Orchidaceae: *Platanthera holochila* (No Common Name)

Kauai H, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Platanthera holochila* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest or *M. polymorpha* mixed bog containing one or more of the following associated native plants: *Myrsine denticulata, Cibotium* sp., *Coprosma ernodeoides, Oreobolus furcatus, Styphelia tameiameiae, or Vaccinium* sp.; and (2) elevations between 1,050 and 1,600 m (3,450 and 5,245 ft).

Family Plantaginaceae: *Plantago princeps* (laukahi kuahiwi)

Kauai G, K, P, and T, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Plantago princeps* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes, rock walls, or bases of waterfalls (a) in mesic or wet *Metrosideros polymorpha* forest and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Psychotria* sp., *Dicranopteris linearis, Cyanea* sp., *Hedyotis* sp., *Melicope* sp., *Dubautia plantaginea, Exocarpos luteolus, Poa siphonoglossa, Nothocestrum peltatum, Remya montgomeryi, Stenogyne campanulata, Xylosma* sp., *Pleomele* sp., *Machaerina angustifolia, Athyrium* sp., *Bidens* sp., *Eragrostis* sp., *Lysimachia filifolia, Pipturus* sp., *Cyrtandra* sp., or *Myrsine linearifolia*; and (2) elevations between 480 to 1,100 m (1,580 to 3,610 ft).

Family Poaceae: *Panicum niihauense* (lau'ehu)

Kauai J, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Panicum niihauense* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Sand dunes (a) in coastal shrubland and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa, Cassytha filiformis, Scaevola sericea, Sida fallax, Vitex rotundifolia*, or *Sporobolus* sp.; and (2) elevations of 100 m or less (330 ft).

Family Poaceae: *Poa mannii* (Mann's bluegrass)

Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Poa mannii* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Cliffs, rock faces, or stream banks (a) in lowland or montane wet, dry, or mesic *Metrosideros polymorpha* or *Acacia koa-Metrosideros polymorpha* montane mesic forest and (b) containing one or more of the following associated native plant species: *Alectryon macrococcus, Antidesma platyphyllum, Bidens cosmoides, Chamaesyce celastroides* var. *hanapepensis, Artemisia australis, Bidens sandwicensis, Lobelia sandwicensis, Wilkesia gymnoxiphium, Eragrostis variabilis, Panicum lineale, Mariscus phloides, Luzula hawaiiensis, Carex meyenii, C. wahuensis, Cyrtandra wawrae, Dodonaea viscosa, Exocarpos luteolus, Labordia helleri, Nototrichium* sp., *Schiedea amplexicaulis, Hedyotis terminalis, Melicope anisata, M. barbigera, M. pallida, Pouteria sandwicensis, Schiedea membranacea, Diospyros sandwicensis, Psychotria mariniana, P. greenwelliae*, or *Kokia kauaiensis*; and (2) elevations between 460 and 1,150 m (1,510 and 3,770 ft).

Family Poaceae: *Poa sandvicensis* (Hawaiian bluegrass)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Poa sandvicensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Wet, shaded, gentle or steep slopes, ridges, or rock ledges (a) in semi-open or closed, mesic or wet, diverse montane forest dominated by *Metrosideros polymorpha* and (b) containing one or more of the following associated native species: *Dodonaea viscosa, Dubautia* sp., *Coprosma* sp., *Melicope* sp., *Dianella sandwicensis, Alyxia olivaeformis, Bidens* sp., *Dicranopteris linearis, Schiedea stellarioides, Peperomia macraeana, Claoxylon sandwicense, Acacia koa, Psychotria* sp., *Hedyotis* sp., *Scaevola* sp., *Cheirodendron* sp., or *Syzygium sandwicensis*; and (2) elevations between 1,035 to 1,250 m (3,400 to 4,100 ft).

Family Poaceae: *Poa siphonoglossa* (No Common Name)

Kauai G, I, and U, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Poa siphonoglossa* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Shady banks near ridge crests (a) in mesic *Metrosideros polymorpha* forest and (b) containing one or more of the following associated native plant species: *Acacia koa, Psychotria* sp , *Scaevola* sp., *Alphitonia ponderosa, Zanthoxylum dipetalum, Tetraplasandra kauaiensis, Dodonaea viscosa, Hedyotis* sp., *Melicope* sp., *Vaccinium* sp., *Styphelia tameiameiae, Carex meyenii, Carex wahuensis*, or *Wilkesia gymnoxiphium*; and (2) elevations between 1,000 to 1,200 m (3,300 and 3,900 ft).

Family Portulacaceae: *Portulaca sclerocarpa* (po e)

Critical habitat includes the Lanai unit G which is identified in paragraph

(a)(1)(i)(E) of this section. Within this unit the primary constituent elements are the exposed ledges with thin soil in coastal communities.

Family Primulaceae: *Lysimachia filifolia* (No Common Name)

Kauai T, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Lysimachia filifolia* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Mossy banks at the base of cliff faces within the spray zone of waterfalls or along streams in lowland wet forests and containing one or more of the following associated native plant species: mosses, ferns, liverworts, *Machaerina* sp., *Heteropogon contortus*, or *Melicope* sp.; and (2) elevations between 240 to 680 m (800 to 2,230 ft).

Family Rhamnaceae: *Gouania meyenii* (No Common Name)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Gouania meyenii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Rocky ledges, cliff faces, or ridge tops (a) in dry shrubland or *Metrosideros polymorpha* lowland mesic forest and (b) containing one or more of the following native plant species: *Dodonaea viscosa*, *Chamaesyce* sp., *Psychotria* sp., *Hedyotis* sp., *Melicope* sp., *Nestegis sandwicensis*, *Bidens* sp., *Carex meyenii*, *Diospyros* sp., *Lysimachia* sp., or *Senna gaudichaudii*; and (2) elevations between 490 to 880 m (1,600 to 2,880 ft).

Family Rubiaceae: *Hedyotis cookiana* ('awiwi)

Kauai G, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Hedyotis cookiana* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Streambeds or steep cliffs close to water sources in lowland wet forest communities; and (2) elevations between 170 and 370 m (560 and 1,210 ft).

Family Rubiaceae: *Hedyotis mannii* (pilo)

Critical habitat includes the Lanai unit A which is identified in paragraph (a)(1)(i)(E) of this section. Within this unit the primary constituent elements are the dark, narrow, rocky gulch walls or steep stream banks in wet forests, and containing one or more of the following associated native plant species: *Sadleria* sp., *Selaginella* sp., *Broussaisia arguta*, *Labordia* sp., *Cyrtandra* sp., *Scaevola* sp., *Freycinetia arborea*, *Blechnum occidentale*, *Pipturis* sp., *Carex meyenii*, *Pneumatopteris sandwicensis*, *Cibotium* sp., *Cyanea* sp., or *Psychotria* sp.; and elevations between 150 and 1,050 m (490 and 3,450 ft).

Family Rubiaceae: *Hedyotis schlechtendahliana* var. *remyi* (kopa)

Critical habitat includes the Lanai unit A which is identified in paragraph (a)(1)(i)(E) of this section. Within this unit the primary constituent elements are the ridge crests in mesic windswept shrubland, and containing one or more of the following associated native plant species: *Metrosideros polymorpha*, *Dicranopteris linearis*, *Styphelia tameiameiae*, *Dodonaea viscosa*, *Odontosoria chinensis*, *Sadleria* sp., *Dubautia* sp., or *Myrsine* sp.; and elevations between 730 and 900 m (2,400 to 3,000 ft).

Family Rubiaceae: *Hedyotis st.-johnii* (Na Pali beach Hedyotis)

Kauai G and J, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Hedyotis st.-johnii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Crevices of north-facing, near-vertical coastal cliff faces within the spray zone (a) in sparse dry coastal shrubland and (b) containing one or more of the following native plant species: *Myoporum sandwicense*, *Eragrostis variabilis*, *Lycium sandwicense*, *Heteropogon contortus*, *Artemisia australis* or *Chamaesyce celastroides*; and (2) elevations above 75 m (250 ft).

Family Rutaceae: *Melicope haupuensis* (alani)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Melicope haupuensis* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Moist talus slopes (a) in *Metrosideros polymorpha* dominated lowland mesic forests or *Metrosideros polymorpha-Acacia koa* montane mesic forest and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa*, *Diospyros* sp., *Psychotria mariniana*, *P. greenwelliae*, *Melicope ovata*, *M. anisata*, *M. barbigera*, *Dianella sandwicensis*, *Pritchardia minor*, *Tetraplasandra waimeae*, *Claoxylon sandwicensis*, *Cheirodendron trigynum*, *Pleomele aurea*, *Cryptocarya mannii*, *Pouteria sandwicensis*, *Bobea brevipes*, *Hedyotis terminalis*, *Elaeocarpus bifidus*, or *Antidesma* sp; and (2) elevations between 375 to 1,075 m (1,230 to 3,530 ft).

Family Rutaceae: *Melicope knudsenii* (alani)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Melicope knudsenii* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Forested flats or talus slopes (a) in lowland dry or montane mesic forests and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa*, *Antidesma* sp., *Metrosideros polymorpha*, *Xylosma* sp., *Hibiscus* sp., *Myrsine lanaiensis*, *Diospyros* sp., *Rauvolfia sandwicensis*, *Bobea* sp., *Nestegis sandwicensis*, *Hedyotis* sp., *Melicope* sp., *Psychotria* sp., or *Pittosporum kauaiensis*; and (2) elevations between 450 to 1,000 m (1,480 to 3,300 ft).

Family Rutaceae: *Melicope munroi* (alani)

Critical habitat includes the Lanai unit A which is identified in paragraph (a)(1)(i)(E) of this section. Within this unit the primary constituent elements are the slopes in lowland wet shrublands, and containing one or more of the following native plant taxa: *Diplopterygium pinnatum*, *Dicranopteris linearis*, *Metrosideros polymorpha*, *Cheirodendron trigynum*, *Coprosma* sp., *Broussaisia arguta*, other *Melicope* sp., *or Machaerina angustifolia*; and elevations between 790 to 1,020 m (2,600 to 3,350 ft).

Family Rutaceae: *Melicope pallida* (alani)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Melicope pallida* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep rock faces (a) in lowland or montane mesic or wet forests or shrubland and (b) containing one or more of the following associated native plant species: *Dodonaea viscosa*, *Lepidium serra*, *Pleomele* sp., *Boehmeria grandis*, *Coprosma* sp., *Hedyotis terminalis*, *Melicope* sp., *Pouteria sandwicensis*, *Poa mannii*, *Schiedea membranacea*, *Psychotria mariniana*, *Dianella sandwicensis*,

Pritchardia minor, Chamaesyce celastroides var. *hanapepensis, Nototrichium* sp., *Carex meyenii, Artemisia* sp., *Abutilon sandwicense, Alyxia olivaeformis, Dryopteris* sp., *Metrosideros polymorpha, Pipturus albidus, Sapindus oahuensis, Tetraplasandra* sp., or *Xylosma hawaiiense*; and (2) elevations between 490 to 915 m (1,600 to 3,000 ft).

Family Rutaceae: *Zanthoxylum hawaiiense* (a'e)

Kauai I, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Zanthoxylum hawaiiense* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Lowland dry or mesic forests, or montane dry forest, (a) dominated by *Metrosideros polymorpha* or *Diospyros sandwicensis*, and (b) containing one or more of the following associated plant species: *Pleomele auwahiensis, Antidesma platyphyllum, Pisonia* sp., *Alectryon macrococcus, Charpentiera* sp., *Melicope* sp., *Streblus pendulinus, Myrsine lanaiensis, Sophora chrysophylla*, or *Dodonaea viscosa*; and (2) elevations between 550 and 730 m (1,800 and 2,400 ft).

Family Santalaceae: *Exocarpos luteolus* (heau)

Kauai G, H, I, L, and S, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Exocarpos luteolus* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Wet places bordering swamps; open, dry ridges (a) in lowland or montane *Metrosideros polymorpha* dominated wet forest communities and (b) containing one or more of the following native plant species: *Acacia koa, Cheirodendron trigynum, Pouteria sandwicensis, Dodonaea viscosa, Pleomele aurea, Psychotria mariniana, Psychotria greenwelliae, Bobea brevipes, Hedyotis terminalis, Elaeocarpus bifidus, Melicope haupuensis, Dubautia laevigata, Dianella sandwicensis, Poa sandvicensis, Schiedea stellarioides, Peperomia macraeana, Claoxylon sandwicense, Santalum freycinetianum, Styphelia tameiameiae*, or *Dicranopteris linearis*; and (2) elevations between 475 and 1,290 m (1,560 and 4,220 ft).

Family Sapindaceae: *Alectryon macrococcus* (mahoe)

Kauai G, I, and U, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Alectryon macrococcus* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Dry slopes or gulches (a) in *Diospyros* sp.-*Metrosideros polymorpha* lowland mesic forest, *Metrosideros polymorpha* mixed mesic forest, or *Diospyros* sp. mixed mesic forest, (b) containing one or more of the following native plant species: *Nestegis sandwicensis, Psychotria* sp., *Pisonia* sp., *Xylosma* sp., *Streblus pendulinus, Hibiscus* sp., *Antidesma* sp., *Pleomele* sp., *Acacia koa, Melicope knudsenii, Hibiscus waimeae, Pteralyxia* sp., *Zanthoxylum* sp., *Kokia kauaiensis, Rauvolfia sandwicensis, Myrsine lanaiensis, Canthium odoratum, Canavalia* sp., *Alyxia oliviformis, Nesoluma polynesicum, Munroidendron racemosum, Caesalpinia kauaiense, Tetraplasandra* sp., *Pouteria sandwicensis*, or *Bobea timonioides*; and (2) elevations between 360 to 1,070 m (1,180 to 3,510 ft).

Family Solanaceae: *Nothocestrum peltatum* ('aiea)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Nothocestrum peltatum* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Rich soil on steep slopes (a) in montane or lowland mesic or wet forest dominated by *Acacia koa* or a mixture of *Acacia koa* and *Metrosideros polymorpha*, and (b) containing one or more of the following associated native plant species: *Antidesma* sp., *Dicranopteris linearis, Bobea brevipes, Elaeocarpus bifidus, Alphitonia ponderosa, Melicope anisata, M. barbigera, M. haupuensis, Pouteria sandwicensis, Dodonaea viscosa, Dianella sandwicensis, Tetraplasandra kauaiensis, Claoxylon sandwicensis, Cheirodendron trigynum, Psychotria mariniana, P. greenwelliae, Hedyotis terminalis, Ilex anomala, Xylosma* sp., *Cryptocarya mannii, Coprosma* sp., *Pleomele aurea, Diplazium sandwicensis, Broussaisia arguta*, or *Perrottetia sandwicensis*; and (2) elevations between 915 to 1,220 m (3,000 to 4,000 ft).

Family Solanaceae: *Solanum sandwicense* ('aiakeaakua, popolu)

Kauai D, G, and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Solanum sandwicense* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Open, sunny areas (a) in diverse lowland or montane mesic or wet forests and (b) containing one or more of the following associated plants: *Alphitonia ponderosa, Ilex anomala, Xylosma* sp., *Athyrium sandwicensis, Syzygium sandwicensis, Bidens cosmoides, Dianella sandwicensis, Poa siphonoglossa, Carex meyenii, Hedyotis* sp., *Coprosma* sp., *Dubautia* sp., *Pouteria sandwicensis, Cryptocarya mannii, Acacia koa, Metrosideros polymorpha, Dicranopteris linearis, Psychotria* sp., or *Melicope* sp.; and (2) elevations between 760 and 1,220 m (2,500 and 4,000 ft).

Family Violaceae: *Isodendrion laurifolium* (aupaka)

Kauai G, I, and U, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Isodendrion laurifolium* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Diverse mesic or wet forest (a) dominated by *Metrosideros polymorpha, Acacia koa*, or *Diospyros* sp. and (b) containing one or more of the following associated native plant species: *Kokia kauaiensis, Streblus* sp., *Elaeocarpus bifidus, Canthium odoratum, Antidesma* sp., *Xylosma hawaiiense, Hedyotis terminalis, Pisonia* sp., *Nestegis sandwicensis, Dodonaea viscosa, Euphorbia haeleeleana, Pleomele* sp., *Pittosporum* sp., *Melicope* sp., *Claoxylon sandwicense, Alphitonia ponderosa, Myrsine lanaiensis*, or *Pouteria sandwicensis;* and (2) elevations between 490 and 820 m (1,600 and 2,700 ft).

Family Violaceae: *Isodendrion longifolium* (aupaka)

Kauai F, G, L, M, and P, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for Isodendrion longifolium on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Steep slopes, gulches, or stream banks (a) in mesic or wet *Metrosideros polymorpha* forests and (b) containing one or more of the following native species: *Dicranopteris linearis, Eugenia* sp., *Diospyros* sp., *Pritchardia* sp., *Canthium odoratum, Melicope* sp., *Cheirodendron* sp., *Ilex anomala, Pipturus* sp., *Hedyotis fluviatilis, Peperomia* sp., *Bidens* sp., *Nestegis sandwicensis, Cyanea hardyi, Syzygium* sp., *Cibotium* sp., *Bobea brevipes,*

Antidesma sp., *Cyrtandra* sp., *Hedyotis terminalis*, *Peperomia* sp., *Perrottetia sandwicensis*, *Pittosporum* sp., or *Psychotria* sp.; and (2) elevations between 410 to 760 m (1,345 to 2,500 ft).

Family Violaceae: *Viola helenae* (No Common Name)

Kauai L, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Viola helenae* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Stream banks or adjacent valley bottoms with light to moderate shade in *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest; and (2) elevations between 610–855 m (2,000–2,800 ft).

Family Violaceae: *Viola kauaiensis* var. *wahiawaensis* (nani wai'ale'ale)

Kauai L, identified in the legal description in paragraph (a)(1)(i)(A) of this section, constitutes critical habitat for *Viola kauaiensis* var. *wahiawaensis* on Kauai. Within this unit, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Open montane bog or wet shrubland containing one or more of the following native plant species: *Dicranopteris linearis*, *Diplopterygium pinnatum*, *Syzygium sandwicensis*, or *Metrosideros polymorpha;* and (2) elevations between 640 and 865 m (2,100 and 2,840 ft).

Family Violaceae: *Viola lanaiensis* (No Common Name)

Critical habitat includes the Lanai unit A which is identified in paragraph (a)(1)(i)(E) of this section. Within this unit the primary constituent elements are the moderate to steep slopes from lower gulches to ridgetops, with a soil and decomposed rock substrate in open to shaded areas in *Metrosideros polymorpha-Dicranopteris linearis* montane mesic forest, lowland wet forest or lowland mesic shrubland, and containing one or more of the following associated native plants: ferns and short windswept shrubs, *Scaevola chamissoniana*, *Hedyotis terminalis*, *Hedyotis centranthoides*, *Styphelia* sp., *Carex* sp., *Ilex* sp., *Psychotria* sp., *Antidesma* sp., *Coprosma* sp., *Freycinetia* sp., *Myrsine* sp., *Nestegis* sp., *Psychotria* sp., or *Xylosma* sp.; and elevations between 670–975 m (2,200–3,200 ft).

(B) *Ferns and Allies.*

Family Aspleniaceae: *Ctenitis squamigera* (pauoa)

Critical habitat includes the Lanai unit A which is identified in paragraph (a)(1)(i)(E) of this section. Within this unit the primary constituent element is the forest understory in diverse mesic forest or scrubby mixed mesic forest, and containing one or more of the following associated native plant species: *Nestegis sandwicensis*, *Coprosma* sp., *Sadleria* sp., *Selaginella* sp., *Carex meyenii*, *Blechnum occidentale*, *Pipturus* sp., *Melicope* sp., *Pneumatopteris sandwicensis*, *Pittosporum* sp., *Alyxia oliviformis*, *Freycinetia arborea*, *Antidesma* sp., *Cyrtandra* sp., *Peperomia* sp., *Myrsine* sp., *Psychotria* sp., *Metrosideros polymorpha*, *Syzygium sandwicensis*, *Melicope* sp., *Wikstroemia* sp., *Microlepia* sp., *Doodia* sp., *Boehmeria grandis*, *Nephrolepis* sp., *Perrotettia sandwicensis*, or *Xylosma* sp.; and elevations between 380 and 917 m (1,250 and 3,010 ft).

Family Aspleniaceae: *Diellia pallida* (No Common Name)

Kauai G and I, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Diellia pallida* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Bare soil on steep, rocky, dry slopes (a) in lowland mesic forests and (b) containing one or more of the following native plant species: *Acacia koa*, *Alectryon macrococcus*, *Antidesma platyphyllum*, *Metrosideros polymorpha*, *Myrsine lanaiensis*, *Zanthoxylum dipetalum*, *Tetraplasandra kauaiensis*, *Psychotria mariniana*, *Carex meyenii*, *Diospyros hillebrandii*, *Hedyotis knudsenii*, *Canthium odoratum*, *Pteralyxia kauaiensis*, *Nestegis sandwicensis*, *Alyxia olivaeformis*, *Wilkesia gymnoxiphium*, *Alphitonia ponderosa*, *Styphelia tameiameiae*, or *Rauvolfia sandwicensis;* and (2) elevations between 530 to 915 m (1,700 to 3,000 ft).

Family Grammitidaceae: *Adenophorus periens* (pendant kihi fern)

Kauai F, G, K, L, P, and R, identified in the legal descriptions in paragraph (a)(1)(i)(A) of this section, constitute critical habitat for *Adenophorus periens* on Kauai. Within these units, the currently known primary constituent elements of critical habitat are habitat components that provide: (1) Well-developed, closed canopy that provides deep shade or high humidity (a) in *Metrosideros polymorpha-Cibotium glaucum* lowland wet forests, open *Metrosideros polymorpha* montane wet forest, or *Metrosideros polymorpha-Dicranopteris linearis* lowland wet forest, and (b) containing one or more of the following native plant species: *Athyrium sandwicensis*, *Broussaisia* sp., *Cheirodendron trigynum*, *Cyanea* sp., *Cyrtandra* sp., *Dicranopteris linearis*, *Freycinetia arborea*, *Hedyotis terminalis*, *Labordia hirtella*, *Machaerina angustifolia*, *Psychotria* sp., *Psychotria hexandra*, or *Syzygium sandwicensis;* and (2) elevations between 400 and 1,265 m (1,310 and 4,150 ft).

* * * * *

Dated: November 30, 2000.

Kenneth L. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–31080 Filed 12–26–00; 8:45 am]

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Federal Register

Wednesday,
December 27, 2000

Part IV

Department of Labor

Pension and Welfare Benefits Administration

Department of Health and Human Services

Office of Child Support Enforcement

29 CFR Part 2590

45 CFR Part 303

National Medical Support Notice; Final Rule

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2590

RIN 1210–AA72

National Medical Support Notice

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains a final rule that promulgates a National Medical Support Notice to be issued by State agencies as a means of enforcing the health care coverage provisions in a child support order, and to be treated by plan administrators of group health plans as a qualified medical child support order under section 609(a) of Title I of the Employee Retirement Income Security Act (ERISA). Through this regulation, the Department of Labor (the Department) is implementing an amendment to section 609 (a) of ERISA, made by section 401 of the Child Support Performance and Incentive Act of 1998 (CSPIA), Pub. L. 105–200. This rule will affect group health plans, participants in group health plans, noncustodial children of such participants, and State agencies that administer child support enforcement programs.

DATES: The regulation is effective January 26, 2001.

FOR FURTHER INFORMATION CONTACT: David Lurie or Susan Rees, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, (202) 219–8671 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

1. Background

Under section 609(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), each group health plan, as defined in ERISA section 607(1), shall provide benefits in accordance with the applicable requirements of any "qualified medical child support order" (QMCSO). A QMCSO is a medical child support order issued under State law that creates or recognizes the existence of an "alternate recipient's" right to receive benefits for which a participant or beneficiary is eligible under a group health plan, and which satisfies certain additional requirements contained in ERISA section 609(a). An "alternate recipient" is any child of a participant (including a child adopted by or placed for adoption with a participant in a group health plan) who is recognized under a medical child support order as having a right to enrollment under a group health plan with respect to such participant. Upon receipt, the administrator of a group health plan is required to determine, within a reasonable period of time, whether a medical child support order is qualified, and to administer benefits in accordance with the applicable terms of each order that is qualified. Section 514(b)(7) of ERISA also provides that ERISA preemption of State laws does not apply to QMCSOs and provisions of State law described in section 1908 of the Social Security Act (SSA) to the extent that they apply to a QMCSO.[1]

2. The Child Support Performance and Incentive Act

Congress enacted section 401 of the Child Support Performance and Incentive Act of 1998 (CSPIA) to amend both ERISA and the SSA. Section 401(b) of CSPIA directed the Secretaries of Labor and Health and Human Services to jointly develop and promulgate the Notice.

Section 401(c) of CSPIA amended section 466(a)(19) of the SSA (contained in part D of Title IV of the SSA) to require States to enact laws requiring the use of the Notice to enforce medical child support obligations of parents.[2] A State agency that administers a child support enforcement program pursuant to such laws (IV–D Agency or Issuing Agency) will be required to use the Notice to notify the employer of the noncustodial parent that a State court or administrative agency has issued a child support order providing for health care coverage. Under these laws, employers will be required to forward a portion of the Notice to the appropriate group health plan administrator and to withhold any necessary employee contributions.

Section 401(d) of CSPIA added a new subparagraph (C) to section 609(a)(5) of ERISA. Section 609(a)(5)(C) provides that if an administrator of a group health plan which is maintained by the employer of a noncustodial parent of a child, or to which such employer contributes, receives an appropriately completed Notice in the case of such child, and the Notice satisfies the conditions of paragraphs (3) and (4) of ERISA section 609(a), the Notice shall be deemed to be a QMCSO in the case of such child.

Section 401(a) of CSPIA mandated that the Secretaries of Labor and Health and Human Services jointly establish a Medical Child Support Working Group (the Working Group or MCSWG) whose purpose was to identify the impediments to the effective enforcement of medical support by IV–D Agencies and to submit a report to the Secretaries containing recommendations for appropriate measures to address such impediments. CSPIA section 401(a) requires the Secretaries to submit a report to Congress within two months of receipt of the Working Group's report that addresses the recommendations contained in the Working Group's report. CSPIA section 401(g) further requires the two Secretaries to submit a second report to Congress eight months later, regarding possible legislative changes.

3. The Medical Child Support Working Group

CSPIA specifically directed the Working Group, among other things, to make recommendations based on assessments of the form and content of the Notice as developed by the two Departments. The Working Group was composed of 30 members, who represented the Department and the Department of Health and Human Services (HHS), directors of State IV–D and Medicaid agencies, employers (including owners of small businesses) and their trade or industry representatives and certified human resource and payroll professionals, administrators and sponsors of group health plans (as defined in section 607(1) of ERISA), children potentially eligible for medical support, State medical child support programs, and

[1] Section 1908 of the SSA, 42 U.S.C. 1396g–1, conditions State eligibility for Medicaid matching funds on the enactment of certain specified State laws relating to medical child support. Under section 1908 States must enact laws under which insurers (including group health plans) may not deny enrollment of a child under the health coverage of the child's parent on the ground that the child is born out of wedlock, not claimed as a dependent on the parent's tax return, or not in residence with the parent or in the insurer's service area. Section 1908 also sets out rules for States to require of employers and insurers when a parent is ordered by a court or administrative agency to provide health coverage for a child and the parent is eligible for health coverage from that insurer or employer, including a provision which permits the custodial parent or the State agency to apply for available coverage for the child, without regard to open season restrictions.

[2] This requirement is effective for each State on or after the later of October 1, 2001, or the effective date of laws enacted by the legislature of such State implementing the amendments to the SSA made by section 401 of CSPIA, but in no event later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after October 1, 2001. In the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature. Some States, therefore, may not have laws mandating the use of the Notice until 2003. Until that time, such States may continue to use medical child support orders other than the Notice.

organizations representing State child support programs.

The Working Group held a series of nine meetings beginning in March of 1999. The initial meetings of the Working Group led the Departments to a more complete appreciation of the complexity of the issues involved in the development of the Notice. In the interest of developing a more useful Notice, the Departments decided to obtain additional input from the Working Group, which necessitated taking additional time in developing the Notice. Comments from the Working Group proved very helpful in the development of the proposed regulations issued by the Secretaries on November 15, 1999 (64 FR 62054, 62074).[3] In a meeting held June 8, 2000, the Working Group formally approved a Report to be submitted to the Secretaries. The Report contains 76 recommendations relating to medical child support enforcement, including recommendations concerning the proposed Notice.[4]

4. The National Medical Support Notice

A. General

The Departments of Labor and HHS are jointly promulgating the Notice. The Notice has two parts, Part A, the "Notice to Withhold for Health Care Coverage," and Part B, the "Medical Support Notice to Plan Administrator." Also being published in the **Federal Register** today is a parallel regulation issued by the Office of Child Support Enforcement (OCSE), HHS, under sections 452(f) and 466(a)(19) of the SSA, 42 U.S.C. 652(f) and 666(a)(19), as amended by section 401 of CSPIA. That regulation, at 45 C.F.R. 303.32, in addition to promulgating the Notice, provides guidance to States on implementing the laws required by such sections. These laws describe the duties and obligations of employers and State agencies generally with respect to Part A of the Notice. The Department of Labor's regulation promulgated herein provides guidance to plan administrators for processing Part B of the Notice.

[3] In an effort to ensure that the statutorily mandated Notice facilitated IV–D Agency efforts to secure health care coverage for children, consistent with Congressional intent, and taking into account the views of the Working Group, the Department first promulgated the Notice as a proposed rulemaking rather than as an interim regulation as provided for in section 401(b)(5) of CSPIA.

[4] A copy of the Report is available in the Department's Public Disclosure Room for the Pension and Welfare Benefits Administration (PWBA), Room N5638, 200 Constitution Avenue, N.W., Washington, D.C. 20210. The Report is also available at www.pwba.dol.gov.

B. Part A—Notice to Withhold for Health Care Coverage

As described in the OCSE regulation, a State IV–D agency will issue the two-part Notice to an employer who maintains or contributes to a group health plan, and employs a noncustodial parent obligated by a child support order to provide medical support for his or her children. Part A, the "Notice to Withhold for Health Care Coverage" identifies the obligated employee as well as the child(ren) to whom the order applies. The Instructions to Employer inform the employer of its obligations (i) to transfer Part B of the Notice to the administrator of each group health plan to which the Notice applies within 20-business days of the date of the Notice, (ii) if the Notice is determined to be a QMCSO by the plan administrator, to determine whether Federal or State withholding limitations or prioritization rules permit the withholding from the employee's income of the amount required to obtain coverage for the children under the terms of the plan, (iii) if appropriate, to withhold from the income of the employee any contributions required under the group health plan for such coverage, and (iv) to transmit those amounts to the group health plan. Part A also includes an Employer Response, which the employer would use to notify the Issuing Agency if the employer does not maintain or contribute to a group health plan that offers family health care coverage or that the employee is among a class of employees that is not eligible for family health coverage under any plan maintained by the employer or to which the employer contributes, or if the individual is no longer employed by the employer.

The Instructions to Employer in Part A also notify the employer (i) of Federal and State limitations on withholding, (ii) of the obligation to comply with any applicable withholding prioritization law established by the State of the employee's principal place of employment and to notify the State agency which issued the Notice of the employee's termination of employment, (iii) of the duration of the withholding obligation, (iv) of sanctions that the employer might be subject to for failure to withhold as required by the Notice, and (v) that the employee is liable for any employee contributions required by the terms of the plan.

C. Part B—Notice to Plan Administrator

Part B of the Notice, the "Medical Support Notice to Plan Administrator," includes the same information as is contained in Part A. Part B and its Instructions to Plan Administrator were developed to meet the requirements of CSPIA, as well as coordinate those requirements with the existing QMCSO requirements of ERISA section 609(a), because receipt by a plan administrator of Part B of this Notice is considered receipt of a medical child support order as defined in ERISA section 609(a)(2)(B). Part B was also developed to comply with the requirements placed on group health plans under State laws described in SSA section 1908, and to accommodate the requirements for State agencies to use automated processing of medical child support orders where possible.

Receipt of Part B of the Notice from the employer notifies the administrator of the group health plan that the named employee is obligated by a court or administrative child support order to provide medical support coverage for the named child(ren), and that the named employee is enrolled or eligible for enrollment under the plan maintained by or contributed to by the employer. The Notice is to be treated as an application by the Issuing Agency for health coverage for the child(ren) to the extent such application is required by the plan.

The Notice is designed to provide the information necessary for the plan administrator to determine, as required by section 609(a)(5)(A), whether the Notice is a QMCSO under section 609(a) of ERISA, and to enroll the child(ren) as dependent(s) in the group health plan. ERISA section 609(a)(5)(C) provides that if a plan administrator receives an appropriately completed Notice that satisfies the conditions of paragraphs (3) and (4) of section 609(a), the Notice shall be deemed to be a QMCSO.

The Plan Administrator Response of Part B is to be completed by the plan administrator and returned to the Issuing Agency and/or the parties, as appropriate, to inform them whether the Notice constitutes a QMCSO. If the Notice is qualified, the plan administrator is required to notify the Issuing Agency either that the child(ren) is/are currently or will be enrolled in coverage offered by the plan, and the date of enrollment, or, if the employee is not enrolled and there is more than one option available, inform the Agency of the options from which to elect coverage. Part B is also to be used to notify the Issuing Agency and the parties of certain waiting periods. In addition, Part B is to be used to notify the employer to determine whether any employee contribution necessary for coverage can be withheld from the employee's income. If the plan administrator determines that a Notice

received by the plan is not qualified, he or she is to complete the Response and identify the specific reason(s) why the Notice is not qualified, and is to notify the Issuing Agency and the parties.

Discussion of the Comments

1. General Responsibilities of the Parties

A. Time Periods

The Department received several comments related to the 40-business day period from the date of the Notice within which the employer and the plan administrator are to act on the Notice. Several expressed the view that the respective time periods are too long, and suggested that they should be shortened. One of these commenters explained that under State law, an employer or insurance carrier is required to enroll a child immediately upon receipt of a court order requiring such enrollment. One comment requested clarification regarding whether the 40-business day period to run from the date of receipt of a complete Notice by a plan administrator, or from the mailing date of the Notice.

In response, the time periods are specified in CSPIA. However, in order to coordinate the requirements contained in ERISA section 609(a)(5)(A)(ii) and section 609(a)(5)(C)(ii), the Notice also indicates that the plan administrator would be required to respond more quickly, if reasonable. The Department understands that there may be State insurance laws that will apply in medical child support enforcement with respect to insured plans, and assumes that both Federal and State law will be given effect wherever possible. In response to the last comment, under CSPIA, the period runs from the "date of the Notice." HHS has recommended, and the Department has adopted, the rule used for income withholding notices. Under this interpretation, the period runs from the date the Notice is issued by the IV–D Agency.

B. Confidentiality of Personal Information

Several commenters suggested that the Notice should include general language that warns the employer and plan administrator to safeguard confidential information. Commenters also suggested that the notification responsibilities described in the respective instructions should be drafted in a manner that would prevent any confidential information from being disclosed to either the custodial or noncustodial parent. With respect to the specific information content of the Notice, a commenter suggested that the item in the Notice requiring the address of the custodial parent should instead automatically require the address of a substituted State official. Another suggested that the Notice should not include the addresses of either the custodial or noncustodial parent.

The Department believes the need for confidentiality, although arising in only a small proportion of medical child support enforcement cases, is a serious matter. However, the Notice is designed to put the State court issuing the support order or the IV–D Agency issuing the Notice in control of confidentiality, by permitting either to substitute the name and address of a State official for that of the child and/or custodial parent, where appropriate. Plan administrators are required to honor such substitutions by ERISA section 609(a)(3)(A), and the Department assumes that the employer and the plan administrator will respect this substitution, without specific instruction of the Notice to do so. Later arising confidentiality concerns may also be addressed by section 609(a)(5)(B)(iii) of ERISA, which permits the child to name a representative for receipt of notice from the plan.

The Department believes that these mechanisms work best with the countervailing considerations under ERISA—that the plan administrator is required to send notification of various events to the noncustodial parent whose eligibility for coverage is the basis of the Notice and from whose income any necessary employee contribution will be withheld. Further, absent circumstances that warrant confidentiality, it will be more efficient for both the plan administrator and the custodial parent to be in direct communication on matters such as updated plan information, resolution of benefit claims, reimbursement and other matters of ongoing plan administration.

C. Notification Requirements

Commenters requested guidance that would clarify how the Employer Response and the Plan Administrator Response would be used to satisfy the employer's and plan administrator's notification requirements to the Issuing Agency and the custodial and noncustodial parents. Commenters specifically suggested that the Employer Response and the Plan Administrator Response should be sent only to the Issuing Agency. One commenter expressed the view that notification to the custodial parent duplicates the State's duty to inform the custodial parent that coverage is obtained.

In response, the Department believes that the responsibilities of the employer and plan administrator to provide notifications to the Issuing Agency and the custodial and noncustodial parents as described in the Instructions to the Notice are based on the statutory requirements of CSPIA and ERISA. In implementing the Notice, the Department attempted to integrate overlapping notification requirements in order to make processing as efficient as possible. Therefore, Part A of the Notice provides that the employer need notify only the Issuing Agency if coverage is not available for one of the enumerated reasons on Part A, or, if, after the Notice is qualified, the employer determines that coverage is prevented because of State or Federal withholding limitations. In these instances, the Department understands that the Issuing Agency is responsible for notifying the child and/or parents.

In the draft Notice submitted by the Working Group to the Departments as part of its comments and included in an appendix in its Report to the Secretaries, it was suggested that other notification requirements based on CSPIA or section 609(a) of ERISA, such as of the receipt by the plan administrator of a medical child support order (or Notice) and of the qualification decision and basis, can be met by the plan administrator by sending Part B of the Notice to the parties as well as the Issuing Agency. Although this may be permissible, some members of the Working Group were concerned about confidentiality, and about whether use of Part B as a means of providing notifications would satisfy all other statutory obligations. Therefore the Notice as published herein does not provide that Part B can necessarily be used for all purposes.

D. Disclosure of Plan Information

Commenters suggested that the Notice should specify the employer's and the plan administrator's responsibilities with respect to disclosure of information related to the group health plan or plans covered by a Notice. Another commenter suggested that the regulation and Notice should clarify which disclosure requirements related to the Notice can be satisfied by use of separate documents such as a summary plan description (SPD). Another suggested that the plan administrator should be required to send the description of coverage only to the custodial parent (or substituted official, as appropriate), and not to the Issuing Agency. Several commenters noted that the space on the Plan Administrator Response allocated for a plan

administrator, following qualification, to provide certain information to the Issuing Agency is inadequate.

The Department believes that information on group health plans, including options available under such plans covered by a Notice, may routinely become available to the parties and the Issuing Agency earlier in the process than at the present. The Department understands that under State laws described in section 466(c)(1)(C) of the SSA, employers are required to provide plan information to a IV–D Agency in response to its request for such information. Further, after the issuance of the underlying support order, the Agency or the custodial parent or other representative of the child may request, and is entitled to receive from the plan administrator, sufficient information to understand the options available and to assist in appropriately completing the Notice. Further, upon receipt of Part B from the employer, the plan administrator is obligated to provide plan information to the child/custodial parent because receipt of the Notice triggers the plan administrator's obligation under ERISA section 609(a)(5)(A) to provide the plan's QMCSO procedures and any other information related to the qualification process to the parties. Lastly, under Part B of the Notice, the plan administrator may be obligated to provide information on options under the plan directly to the Issuing Agency if the employee is not enrolled in any option.

In response to the comments above, the Department has amended the Instructions to Plan Administrator in Part B to clarify that the plan administrator may fulfill the obligation to provide plan information by forwarding copies of the plan's SPD, provided that the SPD includes sufficient information concerning required contributions, benefit levels, and limitations (including geographic or service area limitations) of the plan or plan options. In general, in order to satisfy the requirements of CSPIA and ERISA section 609(a), information about the plan or plan options must be sent to the IV-D Agency as well as the child and custodial parent if requested. This clarification is intended to preserve the flexibility of the plan administrator to satisfy the requirement to provide adequate information in the most efficient and cost effective manner available based on the specific circumstances of the plan administrator. While this revision clarifies that the SPD may be used, it is not intended to prescribe or restrict the types of documents that may be used to satisfy the objective of providing adequate information about the plan or plan options.

Other commenters requested that the Notice contain additional information. Several commenters suggested that the Plan Administrator Response in Part B should be modified so that when a plan administrator provides information following enrollment, it will include the group policy number and any other relevant information. Another commenter suggested that the Response should contain an item for the plan administrator to inform the Issuing Agency that enrollment forms have not been returned to the plan. Another commenter suggested that the Notice include an explicit coordination of benefits provision. Another commenter suggested that the Employer Response in Part A should be modified so that it can be used by an employer to notify the Issuing Agency if coverage pursuant to the Notice has lapsed for reasons such as termination of the employee's employment or elimination of family coverage by the employer.

The Department has determined that the Notice has as its purpose the establishment of a qualified order under which group health coverage will be provided to a child. Subsequent changes in enrollment or terminations, while perhaps events subject to notification requirements under Federal or State law, are beyond the scope of this Notice. The Department also recognizes that the Notice does not contain all information that may be useful to the parties. Rather, the Notice has been designed to alert the parties to new obligations and procedures, and to remain as streamlined as possible.

2. Specific Responsibilities To Be Satisfied Within Statutory Time Periods

A. The Employer

In general, the responsibilities of employers are described in the final regulation published today by OCSE. However one commenter asked the Department to reconsider the provision in the proposed regulation that only after a Notice is determined to be a QMCSO by the plan administrator would the employer test withholding limits and initiate withholding for contribution to the plan. Several comments suggested that the employer should test whether withholding limits would be exceeded prior to forwarding Part B to the plan administrator. According to these commenters, if withholding limits would be exceeded, the employer should notify the Issuing Agency and the custodial parent of the inability to withhold, and should not send Part B to the plan administrator. These commenters expressed the view that this would result in more efficient administration of a Notice. Other commenters expressed concern that notification that coverage is available when amounts cannot be withheld to pay for such coverage may place a burden on plan administrators and, in some cases, certain State agencies. One commenter suggested that the plan administrator test for withholding as part of the qualification process.

In response to the last comment, the Department concluded that the plan administrator does not have the information or the authority to make income withholding or prioritization determinations. Further, the Departments, as well as the Working Group, also considered and rejected having the employer determine permissible income withholding within the 40-business day period, and prior to forwarding part B of the Notice to the plan administrator for qualification. It is the understanding of the Departments that it may not be feasible for the employer to attempt to determine whether the necessary withholding is possible prior to the time the plan administrator determines that the Notice is a QMCSO because the employer's payroll office or agent, which usually makes such determinations, often does not have information relating to the amount of employee contribution necessary to extend coverage to the child (ren). Also, where group health plans provide different options for coverage, not all options require the same participant contribution. If the employee is not enrolled, the plan administrator may be required to qualify a Notice before an option is selected by the Issuing Agency. In those cases, the employer initially may not have enough information on the amount of withholding required for coverage.

Although the Department recognizes that the procedure in the Notice may result in some delay between qualification and actual enrollment, the Department believes that qualification of the Notice as a QMCSO at the earliest possible time is most likely to result in more coverage for children. Further, with QMCSOs enforced outside the IV-D system (private QMCSOs), the determination concerning income withholding will necessarily take place after an order is qualified, because the order generally is relayed directly from the court or administrative agency to the plan administrator. Therefore, under the final regulation, as under the proposal, the employer's withholding determination takes place after the qualification of the Notice.

B. The Plan Administrator

One commenter suggested that the regulation should specify or clarify what responsibilities the plan administrator must fulfill within the applicable 40-business day period. This commenter expressed the view that such clarification would assist IV-D Agencies in developing automated systems for sending inquiries to those plan administrators who do not fulfill their duties in a timely manner. One commenter suggested that the regulation should provide that the 40-business day period shall not run while a plan administrator does not have "complete" information. A commenter also suggested that to correspond with such guidance, the Notice should be modified to contain a space for the plan administrator to inform the Issuing Agency that it cannot satisfy its obligations within the 40-business day period because Part B is incomplete or there is insufficient information for it to determine if the named child can be covered by the plan. This commenter explained that some plans verify that a named child is eligible under the terms of the plan before qualifying an order.

In response, the Department believes that an appropriately completed Notice will have sufficient information for it to be deemed a QMCSO, although additional steps may need to be taken before the enrollment is effective. If a plan administrator receives Part B from the employer, the employer has already confirmed that group health coverage is available and that the employee who is the noncustodial parent is enrolled or eligible for enrollment, and, therefore, that the child is eligible under the Notice for enrollment under the plan (unless over the age limit for dependent coverage under the plan). In addition, both ERISA section 609(a) and State laws described in section 1908 of the SSA have eliminated a number of eligibility criteria that may have been an issue in the past, such as exclusions of children on Medicaid or Medicaid eligible or born out of wedlock, from the definition of "dependent." Therefore, the Department believes that qualification of the Notice can be accomplished well within the 40-business days provided by CSPIA.

3. Qualification by the Plan Administrator

A. Description of Coverage Provided in the Notice

The proposed regulation at section 2590.609–2(a) provided, as required by section 609(a)(5)(C) of ERISA, that an "appropriately completed" Notice that also satisfies the requirements of paragraphs (3) and (4) of section 609(a) is deemed to be a QMCSO. The proposal provided in relevant part that a Notice is appropriately completed if it contains the name of an Issuing Agency, the name and mailing address of an employee who is a participant under the plan, the name and mailing address of one or more alternate recipient(s), and if the family group health care coverage required by the child support order is identified and available. One commenter expressed concern that the language in the proposal requiring that family group health care coverage must be "identified and available" might be interpreted as requiring the Issuing Agency to include the name and address of the plan. This commenter suggested that the Department substitute language that would lessen the likelihood of such a misinterpretation.

Several other comments were made regarding the identification of the type of coverage required in the proposed Notice. Commenters generally requested clarification that a "reasonable description" of the type of coverage as required by ERISA 609(a)(3)(B) would be satisfied by a description consisting of "any coverage available under the plan," and that the "type of coverage" provision in the Notice should be modified accordingly. Other commenters suggested that the "type of coverage" provision should be expanded so that an Issuing Agency may enforce orders that provide more specific types of coverage. Commenters suggested that this could be done by providing an exhaustive list of boxed-items that could be checked by the Issuing Agency or by providing empty lines for this purpose.

In response to these comments, the Department has clarified in the final regulation that a Notice is appropriately completed within the meaning of section 609(a)(5)(C) if it identifies an Issuing Agency and an employee of an employer, enrolled or eligible for enrollment in a group health plan sponsored by the employer or to which the employer contributes, who is a noncustodial parent obligated by a State court or administrative order to provide medical child support for one or more children named in the Notice, and also identifies the underlying support order. However, the Issuing Agency is not required to provide the name and address of a group health plan on a Notice because a Notice can be used to enforce a child support order that establishes a general obligation to provide health care coverage. In recognition, the Department has changed the Notice to provide a box to be checked by the Issuing Agency for any available coverage. In addition, the Notice provides boxes for the Agency to select a particular type of coverage, although the number has not been increased from the proposal.

The Department also has added clarification in the final regulation as to how the Notice will satisfy the requirements of ERISA section 609(a)(3) and (a)(4). Under subparagraph (A) of section 609(a)(3) a QMCSO must include information identifying the employee and child. Subparagraph (B) requires a reasonable description of the type of coverage to be provided or the manner in which such coverage is to be determined, and subparagraph (C) requires a description of the period to which such order applies.

It is the view of the Department that the Notice satisfies ERISA section 609(a)(3)(A) by including the necessary identifying information in Part B that also satisfies the CSPIA requirement contained in section 609(a)(5)(C) of being "appropriately completed." The Department interprets ERISA section 609(a)(3)(B) as being met initially by having the Issuing Agency identify on the Notice some or all of the group health plan options to be considered. Upon receipt of the Notice, the employer will identify whether group health coverage with dependent coverage is available to this employee prior to forwarding part B of the Notice to the plan administrator. The final regulation now provides that if an employer offers a number of different types of benefits (e.g., dental, prescription) through separate plans and receives a Notice on which the Issuing Agency has not specified which or all are covered by the Notice, the employer should assume all, and forward copies of Part B of the Notice to each plan administrator. Further, if a Notice is received by the administrator of a group health plan with several options (e.g., a fee for services option and a managed care option) and the employee is not enrolled, the ERISA section 609(a)(3)(B) requirement will be satisfied because the Notice directs the plan administrator to obtain an election from the Issuing Agency after the Notice is qualified. Finally, ERISA section 609(a)(3)(C) is satisfied by the Notice specifying that the period of coverage may only end for the child(ren) when similarly situated dependents are no longer eligible for coverage under the terms of the plan, or upon the occurrence of certain specified events.[5]

[5] Section 1908(a)(2)(C) and (3)(C) of the SSA sets out rules for States to require that, when a child is provided health care coverage by an parent's insurer pursuant to a court or administrative order,

Under ERISA section 609(a)(4), a QMCSO cannot require a plan to provide new types or forms of benefits not otherwise provided under the plan, except to the extent necessary to meet the requirements of a State law described in section 1908 of the SSA. The Notice satisfies this section because it provides that the child(ren) will only be covered as dependents, or be enrolled only in an option provided under the plan available to other dependents, and the Instructions inform the plan administrator of the restrictions relating to section 1908 of the SSA.

The Department has made several small changes in the final regulation consistent with this discussion, as well as other small changes to simplify the Notice by removing guidance available to the parties elsewhere.

B. Other Qualification Matters

A commenter requested that the Notice should indicate which items to be completed by the Issuing Agency are essential for the effectiveness of the Notice with respect to the plan administrator. This commenter explained that an Issuing Agency might hesitate to provide some items of information listed in the Notice, such as child's social security number, or might not have an employer's EIN. Another suggested that the Department provide guidance regarding the omission of information that a plan administrator can reasonably obtain or determine. Another commenter suggested that, consistent with ERISA section 609(a)(3)(A), the Notice should clarify that a plan administrator may not fail to qualify a Notice solely because the address of a substituted official is entered in place of the address of the child (alternate recipient). Another commenter suggested that the Notice should include a statement that it serves as evidence of the underlying child support order. This commenter explained that including this statement is necessary to ensure that the medical support provisions of the underlying child support order can be implemented upon the receipt of the Notice without requiring any additional documentation.

Although the Notice provides for information designed to assist the parties, such as the EIN of the employer and social security numbers of the parties, not all of these items are necessary for the Notice to be recognized as a QMCSO. As described above, the only information necessary on the Notice is the identity of the Issuing Agency, the identification of an underlying order providing for medical child support, and the names and addresses of the employee and the child(ren) (or substitutes where appropriate). It is the view of the Department that identification of the order on the Notice is sufficient evidence of the existence of the underlying support order. The plan administrator may take Part B of the Notice at face value, and is not obligated (nor should undertake under normal circumstances) to make an inquiry into the bona fides of a Notice or Order under state law. In addition, if any of the necessary information has been omitted but is reasonably available to the plan administrator, the Notice should not fail to be qualified solely because of such omission.

A commenter suggested that the final regulation should provide that a plan administrator would be deemed to have not breached its duties if such plan administrator has acted in good faith to comply with the regulation.

Under ERISA section 609(a)(6), if a plan administrator acts in accordance with the fiduciary standard of conduct in treating a medical child support order as being (or not being) a qualified medical child support order, then the plan's obligation to the participant and each alternate recipient shall be discharged to the extent of any payment made pursuant to such act of the fiduciary. In addition, the Department believes that the Notice is designed to be presumptively qualified when it reaches the plan administrator. Therefore, in most cases, a plan administrator must pay benefits in accordance with the applicable requirements of an appropriately completed Notice.

C. Waiting Periods

The proposed Notice did not specifically address how the application of a waiting period would affect qualification and enrollment. The preamble accompanying the proposal provided in relevant part that "if Part B is appropriately completed, the plan administrator must treat the Notice as a QMCSO, even if there is a waiting period to enroll in the plan." Several commenters suggested that the regulations and the Notice should provide guidance regarding the responsibilities of the respective parties following notification to the Issuing Agency that enrollment is subject to a waiting period. Several commenters suggested that the Employer Response should contain spaces for the employer to inform the Issuing Agency that the named employee is not eligible for coverage because of a waiting period, and to describe such waiting period.

Under section 701(b)(4) of ERISA, as added by the Health Insurance Portability and Accountability Act (HIPAA), a waiting period is the period that must pass with respect to an individual before the individual is eligible to be covered for benefits under the terms of the group health plan. The Department believes that under some circumstances, such as when an employer receives a Notice for a newly hired employee, or where the Notice requires enrollment of the employee for enrollment of the child, such waiting periods will apply to the employee and child. As under the proposed regulation, the Department believes that a Notice should be qualified regardless of the applicability of a waiting period. The MCSWG in Recommendation #39 of its Report suggested that the employer should be responsible for applications subject to a waiting period of 90 days or more, or if the waiting period is ascertained by some other means such as hours worked.

In response to public comments and concerns of the Working Group, the Notice clarifies that if more than ninety days remain of the waiting period, or if it is measured by some other means, the plan administrator qualifies the Notice, and returns Part B to the employer and the Issuing Agency without completing the enrollment. Upon notification from the employer of satisfaction of the period, the plan administrator completes the enrollment process. However, if the plan provides a waiting period of ninety days or less, or if ninety days or less remain of a longer waiting period, the plan administrator qualifies the Notice, and processes the enrollment, notifying the parties, including the Issuing Agency, of the effective date.

D. Notification to Issuing Agency of Multiple Enrollment Options

The proposed Notice provided that, following qualification, in the event that more than one enrollment option would be available to an alternate recipient, the plan administrator would use the Plan Administrator Response to notify the Issuing Agency of these options. The Agency would then choose the option in which the child(ren) would be enrolled.

Several commenters suggested that the Plan Administrator Response (and any corresponding Instructions) should be modified so that the notification to the Issuing Agency regarding multiple enrollment options also includes the

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the child may only be disenrolled if the employer or insurer is provided satisfactory evidence that the order is no longer in effect, the child is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment, or the employer eliminates family health coverage for all of its employees.

cost of dependent coverage for each option. These commenters explained that, in the event that limitations on withholding would prevent an employer from withholding sufficient amounts for contribution to a plan, information regarding cost of coverage would permit an Issuing Agency to address this problem by modifying the amount withheld for cash support or selecting an option that requires employee contribution within the limitations.

Additionally, some of these commenters suggested that the Plan Administrator Response (and any corresponding Instructions) should be modified so that notification regarding multiple enrollment options also includes a description of any service area limitations. Such information would permit the Issuing Agency to choose an option that could provide benefits to an alternate recipient.

The MCSWG in Recommendation #36 suggested that if some or all options under the plan are limited to specific geographic service areas, then (in addition to sending the Plan Administrator Response to the Issuing Agency) the plan administrator should provide information to the Agency that would allow that Agency to determine whether the coverage would be accessible to the child, although if the child is outside the plan's service area, the plan administrator should be instructed to enroll the child in the plan unless the Agency notifies the plan otherwise. The MCSWG suggested in Recommendation #37 that if the plan administrator cannot determine the child's zip code or location from the Notice, the plan administrator should be instructed to contact the Issuing Agency to obtain sufficient information to determine which options would be accessible to the child or to provide sufficient information to the Agency to make such a determination.

In response, the Department believes that the majority of these concerns will be alleviated because the addition of automatic enrollments in the final Notice decreases the likelihood that the Issuing Agency will need to select coverage. Furthermore, as discussed previously, the Department assumes that the parties, including the Issuing Agency, will have received adequate information regarding the required contributions, benefit levels, and limitations (including geographic limitations) of the plan or plan options, in the form of an SPD or other documents provided by the plan administrator. In general, the Department believes that the Notice will be used most efficiently when it remains as short and simple as possible, and where the plan administrator has the flexibility to provide the needed information by supplying the appropriate existing documents rather than adding information to the Notice. Therefore, the Department believes that procedures in the final regulation and Notice will satisfy the concern of the Working Group, although the suggestion in Recommendation #36 was not specifically implemented.

With respect to Recommendation #37 of the MCSWG, the Department recognizes the need for information to be exchanged if an option is to be selected, but is reluctant to require the plan administrator to make a determination regarding accessible enrollment options. This determination is better placed with the Agency. Therefore the Department believes it is not appropriate to implement Recommendation #37 of the MCSWG.

E. Issuing Agency Responsibility To Choose Enrollment Option

The Department received several comments that expressed concern regarding the requirement that the Issuing Agency choose from among available options. Some of these comments explained that there may be inadequate staff to carry out this function, that such interaction may cause delays in enrollment, and that such interaction may hinder automation of the child support enforcement system. One commenter requested that the Issuing Agency not be made responsible for requiring the non-custodial parent to change coverage, unless Federal legislation is passed that would require States to include this requirement in the State child support enforcement plans. Several commenters suggested, as an alternative, that in the event multiple options are available, the plan administrator should contact one or both parents to choose an enrollment option. Another suggested alternative was that, in the event multiple options are available, the employer would provide the plan administrator with information regarding withholding limits (in this respect, Part A should be revised so that the Issuing Agency clarifies the limit) and costs of options, and the Notice should instruct the plan administrator to enroll the named child in the option that can be accommodated by the amounts that may be withheld in accordance with applicable withholding limits.

Others recommended that if the named employee is already enrolled in family coverage and the named child is in the plan's service area, then the plan administrator should be instructed to enroll the child in such coverage without any further action by the Issuing Agency. There was also a recommendation that if a plan has a "default option" that it applies with respect to enrollment pursuant to a qualified medical child support order, then it should be permitted to follow that option if the Issuing Agency does not respond within 20-business days regarding its choice from among the available options.

Another commenter recommended that if the named child is currently enrolled as a dependent under the terms of the plan, but other options are available, the plan administrator would use the Plan Administrator Response to notify the Issuing Agency of the availability of options, and the child's enrollment would not change unless the Agency directs otherwise by returning enrollment forms.

In response, the Department understands that some medical child support orders are general in nature, in part because such orders may be used to obtain coverage from a succession of employers and/or group health plans. However, where a plan has only one option, there will be no need to make a selection. This is reflected in the final regulation. Further, in response to comments, under the final regulation, even if there are multiple options under the plan (e.g., a fee for services option and a managed care option), if the child is already enrolled, enrollment will continue unchanged. Also, based on the concerns expressed by State agencies, the final Notice does not provide the Issuing Agency with the opportunity to change the noncustodial parent's existing coverage. Therefore, if the employee is already enrolled in an option with dependent coverage, or with dependent coverage available, the plan administrator should enroll the child with no further action by the Issuing Agency. Thus, in most cases, coverage will be provided automatically, with no further involvement by the Issuing IV–D agency.

The Department recognized, however, that there needed to be some mechanism to implement Notices that are QMCSOs where the employee is not enrolled, the employer provides options under a group health plan, and no option is specified in the Notice. Because the Issuing Agency is enforcing one parent's child support obligations, the Department believes that it is not appropriate to permit either parent alone to choose the coverage. The Department also does not believe it is feasible to adopt the suggestion that the plan administrator choose the enrollment option because the

Department does not believe that the plan administrator should be required to make such discretionary choices regarding coverage. The Department, therefore, concluded that the choice should be made by the Issuing Agency on behalf of the child. Placing the decision with the Issuing Agency also may give that Agency the opportunity to adjust the cash/medical obligation, in order to make appropriate coverage available, and to take into account any assignment of rights to the Medicaid agency.

Lastly, the Notice now provides that if a group health plan offers options, and the employee is not enrolled, and the plan has a default option, the child should be placed in that option if the IV-D agency does not respond to the plan administrator within 20 business days. Even if the plan does not provide a default option, the Department understands that the OCSE regulations, also published today, are designed to ensure that the Issuing Agency will select an option promptly. However, in the event that the Issuing Agency does not, the plan administrator may wish to contact the Agency to ensure that each child is placed in appropriate coverage as soon as reasonably possible.

The Department recognizes that, under these procedures, delays after the Notice is deemed to be a QMCSO may occur in the rare instance that a plan does not have a default option and the Issuing Agency does not respond promptly. The Department also recognizes that this part of the process is not necessarily amenable to automation. This process nonetheless provides a child at least as great a chance of obtaining coverage as a child covered by a private QMCSO, or as a child receiving enforcement services under the State child support enforcement system that existed before CSPIA. With a private QMCSO, there is no mechanism, unless the parents agree, short of returning to the state court or administrative agency that issued the order, to choose between available options. Prior to CSPIA, furthermore, State agencies often had difficulty obtaining medical child support at all. Nevertheless, the Department is soliciting comments regarding approaches by which any remaining delays in providing coverage may be reduced or avoided.

4. Enrollment in Coverage and Types of Benefits

A. Type of Coverage

One commenter requested guidance regarding whether a Notice would require a plan to provide dependent-only coverage if it otherwise would not provide such coverage. Another requested clarification regarding whether a Notice could require enrollment of an employee and an alternate recipient in two separate plans. That commenter expressed the view that a Notice could require enrollment in only one plan.

Under ERISA section 609(a)(4), a QMCSO cannot require a group health plan to offer a type or form of benefit not otherwise provided under the plan, except as required by a State law enacted pursuant to section 1908 of SSA. Therefore, a plan is not required to provide dependent-only coverage if the plan does not otherwise provide such coverage, or offer enrollment in different plans, unless one plan offers dependent-only coverage. However, the Department believes that it is clear from the passage of ERISA section 609(a) and SSA section 1908 that Congress intended plans to enroll children covered by medical child support orders, if the parent is eligible, whether or not the parent is currently enrolled. Therefore, if a plan does not provide dependent-only coverage, it must enroll, without regard to open season restrictions, the child and the parent covered by the Notice if otherwise qualified.

B. Optional Enrollment

Several commenters suggested that the regulation and the Notice should clarify that an employee may be enrolled involuntarily if this is necessary for the enrollment of a named child pursuant to a Notice. In contrast, other commenters objected to the requirement that an employee may be enrolled involuntarily in a plan if this is necessary for enrollment of an alternate recipient. Under such circumstances, one commenter suggested that the employee instead should be given the right to enroll voluntarily, but should not be forced to enroll.

The Department has carefully considered these comments and has decided to publish the final regulation as proposed. The QMCSO provisions clearly were enacted under the assumption that the employee involved might not be enrolled in the applicable coverage. The Department does not believe that Congress intended QMCSOs to be given effect only where the employee consents to enrollment. Rather, it is the Department's interpretation that the underlying order establishing the medical child support obligation requires the plan administrator to provide benefits in accordance with its terms. In addition, State laws described in section 1908 of the SSA require plans and employers to permit the custodial parent to enroll the child, with the implication that the court ordered group health coverage is not dependent on the acquiescence of the employee, the noncustodial parent.

Another commenter expressed the view that requiring an employee who is presently enrolled in a plan to change options from individual coverage to include dependent coverage might be inconsistent with Treasury regulations regarding permissible election changes in "cafeteria" plans.

In response, the Department understands that final Treasury regulations under section 125 of the Internal Revenue Code (IRC) permit a section 125 "cafeteria" plan to change an employee's election to provide coverage for a child who is a dependent of the employee (including a child of either divorced parent [6] if a medical child support order requires coverage for the child).[7] Likewise, a section 125 "cafeteria" plan may permit a participant to make an election change to cancel coverage for such a child if a medical child support order requires another individual to provide coverage for such child.[8]

C. "Unlawful refusal to enroll" Provision

The Department received several comments regarding the "unlawful refusal to enroll" provision in the proposed Notice. One commenter requested that the regulation clarify whether open enrollment restrictions, such as those imposed by HMOs, could be applied to enrollment pursuant to a Notice. Another suggested that the provision should further provide that enrollment cannot be denied on the ground that a child has a preexisting condition that would otherwise make the child ineligible for coverage.

In response, the Department notes that enrollments pursuant to a Notice are to be made without regard to open season restrictions (which generally are limited periodic opportunities to enroll in the plan). This requirement is derived from SSA section 1908(a)(2) and (3).

[6] See section 105(b) of the IRC.

[7] The Department notes that a flexible spending arrangement (as defined in IRS proposed regulation 26 CFR 1.125–2 Q&A 7(c), 54 FR 9460) or medical savings account (as defined in section 220 of the IRC), which may be offered as part of a section 125 "cafeteria" plan, that is subject to Title I of ERISA is a group health plan as defined under ERISA section 607(a), and thus is subject to the requirements of ERISA section 609(a).

[8] See 65 FR 15548, 15552 (March 23, 2000).

However, new enrollees may be subject to pre-existing condition limitations.[9]

D. Period of Coverage

A commenter suggested that language should be added to the "period of coverage" provision so that the disenrollment of a child upon provision of evidence that the order is no longer in effect would be permitted only when such evidence is provided by the Issuing Agency. Another commenter requested guidance on the meaning of "comparable coverage" in this provision.

The Department recognizes the concern raised by these comments. The relevant provisions of the Notice require that coverage may only be terminated if the plan administrator is provided "satisfactory" written evidence that the support order is no longer in effect. In response to the second comment on this section, it is the Department's view that "comparable coverage" as used in the "period of coverage" does not mean identical, but generally means coverage that is similar in scope to the current coverage and that would provide approximately the same type and extent of coverage to the child or children. The term "comparable coverage" appears in section 1908 of the SSA, but is not defined. The Health Care Financing Administration (HCFA) is responsible for interpretations of those provisions of the SSA, and it is the understanding of the Department that HCFA intends to promulgate regulations that will include a discussion of the term "comparable coverage."

E. Other Termination Matters

The Department received several comments related to the employee contributions necessary for coverage. Commenters requested guidance regarding whether a plan would be required to provide benefits if an employer cannot withhold a sufficient amount because of the application of withholding limits.

It is the Department's view that if the necessary employee contributions cannot be made because of income withholding limitations, the plan is under no obligation to continue coverage.

5. Challenges

A number of comments requested clarification regarding how an employee could contest income withholding or could challenge certain aspects of the Notice qualification process.

In response to the comment regarding income withholding, the Instructions to the employer on Part A of the Notice explain that the employee may contest the wage withholding based on a mistake of fact (such as the identity of the obligor), and that to contest such enforcement, the employee should contact the Issuing Agency. State law governs the circumstances under which the employee may challenge the underlying State court order that establishes the support obligation. Lastly, in response to the comment regarding the qualification process, it is the Department's view that the plan's QMCSO procedures should explain the employee's ERISA remedies, including the information that the plan administrator's determination whether a notice is a QMCSO is a fiduciary act that is subject to challenge in Federal court under ERISA.

6. Effective Date and Use

A. General use of the Notice

Several commenters suggested that the Notice should contain language clarifying that, pursuant to sections 401(e) and (f) of CSPIA, it is intended to effect enrollment in plans established or maintained by state and local governments and churches, which are generally exempt from ERISA, as well as group health plans subject to ERISA. These commenters note that, in accordance with section 466(a)(19) of the Social Security Act, State child support enforcement agencies will be required to send the Notice to an employer regardless of whether the group health plan maintained by that employer is subject to ERISA. These commenters express concern that because the Notice refers specifically to ERISA, it may be misinterpreted as applicable only to ERISA-covered plans.

The Department agrees with this comment. The Notice has been revised to clarify its use with respect to church plans and plans of state and local governments.

A commenter asked whether a Notice would be effective for enrollment purposes if sent directly to a plan administrator by an Issuing Agency.

The Department believes that most, if not all, States will continue the practice of sending medical child support orders, including, when adopted by each State, the Notice, to employers for enforcement, as is required under CSPIA. However, if a plan administrator receives a Notice directly from an Issuing Agency, it should be administered as if it were a medical child support order under ERISA section 609(a), to the extent possible.

Commenters requested guidance regarding what entity constitutes an "issuing agency" that is permitted to issue a Notice. One suggested that "issuing agency" means the courts and IV–D or child support enforcement agencies; others suggested that it means only IV–D or child support enforcement agencies. Commenters, including the MCSWG in Recommendation #27 of its Report, reasoned that the relevant statutory provisions contemplate an "issuing agency" that is a child support enforcement agency, and that such guidance will clarify that the specific requirements contained in section 609(a)(5)(C) of ERISA will not apply with respect to a Notice that is not issued by IV–D Agency, and that only Notices issued by IV–D Agencies will be deemed QMCSOs.

In response, the Department notes that it is clear that CSPIA contemplates that the Notice is to be issued by State IV–D agencies. It is also clear, however, that Congress did not intend to invalidate existing or alternative child support enforcement efforts outside of the IV–D system. The obligations imposed by section 609(a)(5)(C) of ERISA apply only with respect to those Notices issued by State IV–D agencies. However, a Notice received from a source other than a IV–D Agency may be valid for purposes of enrolling a child. Plan administrators are advised that such orders are "medical child support orders" as defined in ERISA section 609(a)(2)(B), that the procedures mandated by section ERISA 609(a)(5)(A) and (B) remain applicable with respect to such orders, and that if such orders satisfy the ERISA requirements, they are QMCSOs.

B. Effective Date

The NPRM proposed an October 1, 2001, effective date for the final regulation, which coincides with the earliest date on which States, under section 401(c)(3) of CSPIA (as amended by section 4(b) of Pub. L. 105–306), will be required to use the Notice to enforce the health care coverage provisions of child support orders.

The Department received a number of comments related to the effective date of the regulation. One commenter requested clarification as to when use of the Notice may begin. This commenter noted that some States may begin to use the Notice prior to the proposed effective date of the Labor regulation. Commenters also requested guidance regarding whether the promulgation of the Notice would invalidate orders being treated as qualified medical child

[9] Under section 702 of ERISA, as added by HIPAA, enrollment cannot be denied because of a preexisting condition, and section 701 of ERISA limits the period for which such conditions can affect eligibility for benefits.

support orders prior to the effective date, and, in any case, whether a Notice would need to be issued with respect to these orders. These commenters also questioned whether a Notice may be used to enforce only those child support orders issued after the effective date of the final Notice regulation.

Section 401(d) of CSPIA, which added section 609(a)(5)(C) to ERISA, did not contain a delayed effective date as section 401(c)(3) does. The Department understands that some States will begin to use the Notice upon its final publication. The Department believes such use is permissible and has therefore amended the effective date provision for the regulation to be effective 30 days after publication. After that date, if a plan administrator receives Part B from the employer, the plan administrator must operate in accordance with section 609(a)(5)(C) of ERISA and 29 CFR 2590.609–2. The Department also believes that Congress did not intend to invalidate previously issued and qualified medical child support orders, and that Congress intended that the Notice could be used to enforce orders issued prior to the passage of CSPIA.

Economic Analysis Under Executive Order 12866

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Department must determine whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising 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 the Executive Order, it has been determined that this regulation raises novel legal or policy issues arising out of legal mandates. Therefore, this regulation is "significant" and subject to review under section 3(f)(4) of the Executive Order. Consistent with the Executive Order, the Department has undertaken an assessment of the costs and benefits of this regulatory action. The analysis is detailed below, following a description of the medical child support process and its relationship to this regulation.

Overview

The medical child support process requires that a State child support enforcement agency (State agency) issue a notice to the employer of a noncustodial parent, who is subject to a child support order issued by a court or administrative agency, informing the employer of the parent's obligation to provide health care coverage for the child(ren). The employer must then determine whether family health care coverage is available for which the dependent child(ren) may be eligible, and if so, the employer must notify the administrator of each plan covered by the Notice. The plan administrator is then required to determine whether the dependent child(ren) are eligible for coverage under a plan. If eligible, the plan administrator is required to enroll the dependent child(ren) in an appropriate plan.

Even with a medical child support process in place, State agencies and administrators of group health plans have experienced difficulties in obtaining medical coverage for children of noncustodial parents due to problems encountered in establishing what constitutes a qualified medical child support order (QMCSO). In response to these and other problems affecting the child support process, the Child Support Performance Incentive Act of 1998 (CSPIA) was enacted.

As required by CSPIA, the Department and HHS are jointly promulgating a uniform National Medical Support Notice (Notice) to be used throughout the child support process by State agencies, employers, and plan administrators. This Notice is intended to simplify the issuance and processing of medical child support orders, provide standardized communication between State agencies, employers, and plan administrators, and create a uniform process for the enforcement of medical child support.

The Notice has two parts, Part A, the "Notice to Withhold for Health Care Coverage," and Part B, the "Medical Support Notice to Plan Administrator." The HHS regulation establishes procedures that would be followed once the Notice has been transmitted by the State to the employer and by the employer to the plan administrator. Thus, the Department's regulation provides guidance to plan administrators once Part B has been transmitted to a plan administrator. Part B incorporates the provisions of the CSPIA as it pertains to the Employment Retirement Income Security Act (ERISA). Specifically, Part B would implement section 609(a)(5)(C) of Title I of ERISA, which was added by section 401(d) of CSPIA to provide specific rules for plan administrators to follow upon receipt from an employer of Part B.

For purposes of this economic analysis, the Department estimated the benefits and costs of the regulation relative to the costs of processing child support orders in the current environment. The benefits and costs of the rights conferred by the statute and current practices for processing medical child support orders are included in the baseline and are therefore not considered benefits or costs of the regulation. These include the rights for enrollment in a plan, as well as increased health care coverage and the attendant increases in claims costs faced by employee benefit plans. The Department is not aware of any analysis presently available that seeks to quantify the costs and benefits of the medical support order provisions of CSPIA and, therefore, is not presenting estimates of the costs and benefits of the statute in conjunction with evaluating the incremental cost and benefits of discretion exercised in the regulation.

The Department's analysis indicates that the benefits of the regulation substantially exceed the costs. There are two types of economic effects of the regulation: (1) The more general and primarily indirect societal welfare gains associated with facilitating access to health care for dependent children, and (2) the direct administrative benefits and costs associated with implementing standardized Notices. The new procedures will promote timeliness in processing medical child support orders and accuracy in identifying a medical child support order as a QMCSO, thus, providing dependent children greater access to health care on a regular and timely basis. The new procedures will also increase efficiency and decrease administrative costs per Notice that arise when a non-standardized notice system is replaced by a standardized notice system.

The Department's analysis relies on the basic assumption that plans incur a baseline cost to process notices in the current manner. Each notice is assumed to be unique, requiring individualized effort. The first standardized Notice received by a plan administrator is expected to require the same time as the

unique notices previously received. In addition, however, it is assumed that many plan administrators will invest in establishing new procedures upon receiving the first Notice in anticipation of offsetting this start-up cost in future savings associated with standardization. The processing time for each second and subsequent Notice is assumed to be significantly reduced. Plan administrators who do not have a reasonable expectation of receiving subsequent Notices are assumed to simply continue to process Notices as before and therefore to be unaffected by the regulation.

Based on its analysis, the Department believes that significant net benefits will derive from the direct costs and benefits of the administrative efficiencies which will result from standardization. The degree of the net benefit is a function of the size of the plan. All large plans (those with at least 100 participants) are expected to benefit almost immediately, as they are expected to receive multiple notices the first year, thereby recovering their costs to implement new procedures through decreases in time spent handling subsequent Notices.

An aggregate net benefit is also expected for smaller plans (those with 10–99 participants) although the initial costs associated with procedural changes will be repaid through savings over a longer period of time. The benefits for this group is shown to grow progressively larger over time. Very small plans (those with fewer than 10 participants) are not expected to be affected in the aggregate by the regulation due to the relative infrequency of their receiving medical child support notices.

The estimated net benefits and costs of the regulation in the first three years of implementation are summarized in the table which follows. As shown, the regulation is estimated to result in savings of $26.6 million in the first year, reducing total processing costs by nearly one-half. The savings which accrue to plans will increase over the years as a progressively greater proportion of the Notices yield savings. The analysis indicates a net savings of $31.4 million in the second year increasing to $34.3 million by year three with a total aggregate savings of $92.3 million over the period.

	Baseline cost (millions)	Cost of investment under regulation (millions)	Cost of processing under regulation (millions)	Net savings under regulation (millions)
Year 1	$62.3	$5.7	$30.0	$26.6
Year 2	62.3	3.5	27.4	31.4
Year 3	62.3	3.1	24.9	34.3
Years 1–3	186.9	12.3	82.3	92.3

The more general societal welfare gains that are expected to arise from improvements in the economic security and health of children are not taken into account in the summary of net benefits because they cannot be specifically quantified. A detailed discussion of the development of estimated costs and benefits follows.

Discussion of the Comments

As mentioned above, the Department made changes to the Notice to incorporate the public's comments. These changes to the Notice, however, did not significantly decrease or increase the costs or benefits under the regulation.

The Department did receive one comment about the assumptions used in calculating the economic analysis. The commenter believed that, unlike other health plans, multiemployer health plans would have outside counsel review the notices. Multiemployer health plans are maintained pursuant to *bona fide* collective bargaining agreements and for the benefit of employees represented by a union in the collective bargaining process. Based on the current practice of having outside counsel reviewing qualified domestic relations orders (QDROs), the commenter believed that plan administrators for multiemployer plans would have outside counsel review the notices for multiemployer plans. In response to this comment, it is the Department's view that plan fiduciaries must take appropriate steps to ensure that plan procedures are designed to be cost effective and to minimize expenses associated with the administration of medical child support orders.[10] The Department believes the cost of contracting out legal services, when it is cost effective and reasonable to do so, to be a baseline cost. If multiemployer plans contract out legal services, they are currently incurring the cost when processing medical child support orders. As such, any legal costs associated with the processing of such an order that are reasonably and prudently incurred should be included in the baseline cost. Assuming that multiemployer health plans continue the current practice of contracting out legal services to review the Notice when it is cost effective and reasonable, this also will be a cost under the regulation. Thus, increasing the cost under the regulation will offset any net savings that would result from increasing the baseline cost. The result would be a net change of zero. Therefore, for the economic analysis, the Department has decided not to calculate multiemployer health plan costs separately at higher hourly rates.

[10] *See* Advisory Opinion 94–32, August 4, 1994, footnote 4.

Costs of the Regulation

The only cost of this regulation is the start-up cost incurred by ERISA-covered plans to set up procedures to conform with the format of the Notice.[11] This start-up process is assumed to require one hour of a professional's time at an hourly rate of $45. It is assumed that plan administrators will complete this work themselves, rather than purchase services. The cost is incurred the first time a plan receives a medical child support order under the standardized Notice format. For plans with 100 or more participants, this start-up cost is incurred entirely in the first year, since every one of these plans receives its first standardized Notice in year one. The start-up cost for these plans is $1.7 million. Among plans with 10 to 99 participants, each year a fraction receives a medical child support order and incurs a start-up cost in response. As a result, their aggregate start-up cost, estimated at $4.0 million in year one, falls over time. Plans with fewer than 10 participants receive these Notices too infrequently to make the investment in establishing cost effective procedures

[11] Plans sponsored or maintained by State and local governments and by churches are not subject to Title I of ERISA pursuant to section 4(b)(1) and (2) of ERISA. However, such plans may be required to comply with the Notice under section 401(e) or (f) of CSPIA.

and will be unaffected by the standardized Notice.

Benefits of the Regulation

The introduction of a uniform notice with clear instructions may improve health care quality for children by preventing delays and denials of enrollment in group health care plans, thereby encouraging early intervention in the treatment of disease and illness. The social welfare loss resulting from uninsured children is well documented in economic literature. Based on analysis of the March 1999 Current Population Survey conducted by the Bureau of the Census, 15 percent of all children (or 11.1 million) are currently uninsured. The lack of private insurance generally increases the likelihood that needed medical treatment will be delayed or forgone, and that the ultimate costs of medical treatment will be shifted to public funding sources.

The link between uninsured children and the deficiencies of the existing child support process is demonstrated in the legislative history of CSPIA.[12] The legislative history indicates that there is a lack of effective communication of medical child support information between the State agencies and plan administrators. State agencies typically send employers an administrative notice (that varies from State to State, and sometimes among different counties or courts within a State) of an employee's medical child support obligations, which many plan administrators contend do not comply with current ERISA requirements. Although all child support orders are required to have a medical support component, only a reported 60 percent of all child support orders actually have this medical support component.

In addition, the legislative history cites a 1996 GAO review of State child support enforcement programs which determined that at least 13 States were not petitioning to include a medical support component in their child support orders, and 20 States were not enforcing existing medical child support orders. The number of children who are uninsured as a direct result of failures of this medical child support process is unknown. However, any reduction in the number of uninsured children that can be accomplished by the regulation will produce substantial benefits for the health of those children, and preserve public resources for those without access to private coverage.

[12] 144 Cong. Reg. S7318 (daily ed. June 26, 1998) (Legislative History of Senate and House Amendemnts to the Child Support Performance and Incentive Act of 1998, ub. L. No. 105–200).

Direct benefits of the Notice will accrue to plans, State agencies, employers, parents, and children. Part B will reduce the inefficiencies inherent in current practice, which often require plan administrators to work with medical child support notices that differ from State to State and from individual to individual. Consequently, confusion arises as to what constitutes a QMCSO, and often as a result, the medical support is not provided. Specifically, benefits will accrue to plan administrators because they will all receive a standardized Notice which is easy to comprehend and to administer. This will limit the plans' risk of exposure to errors in determining which orders are QMCSOs and lead to the accurate identification of the dependent children eligible for enrollment in a group health plan. Finally, Part B will promote one of the objectives of the child support process, which is to ensure access to medical care coverage for children.

In the first year of a standardized Notice system, the total cost to private employer group health plans of processing medical child support orders is expected to drop from the current level of $62.3 million to $35.7 million. This estimate is derived as follows.

HHS projects that there will be 1.2 million new child support orders with collections each year. Adjusting this figure to exclude orders received by employers with no ERISA-covered plans or not offering family health coverage, and to add orders that are not new orders but that arise from job changes, the Department of Labor estimates that plan administrators of ERISA-covered group health plans will receive a total of 770,000 Notices annually. The baseline cost (absent this regulation) to handle these notices is estimated to be $62.3 million annually. This assumes 1 hour and 45 minutes processing time at a $45 hourly professional's rate, plus 2 minutes in photocopying time at a $15 clerical rate, and $0.37 for materials and postage per required response.

The Department assumed that plans that invest in new procedures to process standardized Notices will cut their processing time to 35 minutes. Whether or how quickly ongoing savings from faster processing will offset the one-time cost of establishing new procedures will depend on how many Notices a plan receives. The probability of a plan receiving a Notice in a given year is a function of the number of participants in the plan. The probability is low for very small plans, but high for large plans.

Following this reasoning, the Department concluded that plans with fewer then 10 participants will not anticipate near-term savings and therefore will not invest in new procedures but will continue to incur baseline costs, estimated at $2.3 million annually on aggregate.

Plans with 10 to 99 participants will invest in procedures when they receive their first Notice, and will recover their cost and realize net savings within a few years or less on average. On aggregate as a group, these plans will realize net savings beginning in year three. Their aggregate baseline processing costs are estimated at $7.6 million annually. Under the regulation, their aggregate combined costs of processing and establishing new procedures will decline from $11.4 million in year one to $7.4 million in year three, with savings increasing in subsequent years.

Plans with 100 or more participants will invest in new procedures in the first year and will typically recover their cost and realize net savings in that same year. Their aggregate cost will fall from $52.4 million annually under the baseline to $22.8 million under the regulation in year one and to $18.3 million in year two.

Except where noted to the contrary, the assumptions and methods underlying these estimates are the same as those underlying the Department's estimates of the effects of its proposed Notice regulation. These assumptions and methods are detailed the Notice of Proposed Rulemaking (64 FR 62054, November 15,1999).

Alternative Approaches Considered

A number of alternative approaches to this regulation were considered. The first drafts of the Notice presented to the MCSWG consisted of two parts and provided a number of defaults which decreased the discretion required in responding to the Notice and was particularly streamlined. This version was rejected after members of the MCSWG noted that feedback to the Issuing Agency regarding the nature of coverage available and its effective date was essential to the effective enforcement of medical child support obligations. A second version of the Notice was developed which included four parts and provided for more responses to the Issuing Agency. Again the MCSWG provided commentary, responding that this version was too complicated and cumbersome. A third version of the Notice was developed. This version provided feedback to the Issuing Agency, yet it was more streamlined and comprehensible. It enabled the Issuing Agency to select the coverage that would ultimately be provided to the child(ren) from the

options available to the participant/noncustodial parent. Enabling Issuing Agencies to make this selection, rather than having the child automatically placed in a default coverage option, ensured that the child would receive meaningful and accessible coverage from among the particular options available under the plan. The final version, as published here, reflects more streamlining. Also, some public comments to the proposed regulation and Notice have been incorporated. For example, the Department simplified the Notice by removing guidance available to the parties elsewhere. For a complete discussion of comments, see above.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520)(PRA 95), the Department submitted the information collection request (ICR) included in Part B, Medical Support Notice to Plan Administrator of the National Medical Support Notice (Notice) to the Office of Management and Budget (OMB) for review and clearance at the time the Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** (November 15, 1999, 64 FR 62054). OMB approved the Notice under OMB control number 1210–0113. The approval will expire on January 31, 2003.

The Department solicited comments concerning the ICR in connection with the NPRM. The Department received only one comment addressing its burden estimates. Although the original burden estimates relied on the assumption that all Notices would be processed in-house by plan administrative staff, the commenter expressed the differing view that multiemployer health plans will use the services of outside counsel to process Notices, and incur greater costs as a result. The Department recognizes that in limited circumstances it may be cost-effective, and therefore reasonable, for multiemployer health plans to employ outside counsel to process medical child support orders. However, to the extent that the use of outside counsel may have been cost effective for a plan due to the fact that the plan received differing medical child support orders from different States, or from different counties or courts within a State, the uniformity introduced by use of the Notice should reduce the need to use outside counsel to determine whether any particular Notice is qualified. Because the number of multiemployer health plans is small relative to the total number of plans (approximately 2,000 of a total of 2.5 million), and because the number of instances among those plans in which it is reasonable for plans to use outside counsel to process the Notices is expected to be limited, the Department continues to consider its original hour and cost burden estimates to be appropriate.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, section 604 of the RFA requires the agency to present a final regulatory flexibility analysis at the time of the publication of the notice of final rulemaking describing the impact of the rule on small entities. Small entities include small businesses, organizations, and governmental jurisdictions.

For purposes of analysis under the RFA, the Pension and Welfare Benefits Administration (PWBA) considers a small entity to be an employee benefit plan with fewer than 100 participants. The basis for this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans which cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for simplified annual reporting and disclosure if the statutory requirements of part 1 of Title I of ERISA would otherwise be inappropriate for welfare benefit plans. Pursuant to the authority of section 104(a)(3), the Department has previously issued at 29 CFR 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46 and 2520.104b-10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans covering fewer than 100 participants and which satisfy certain other requirements.

Further, while some large employers may have small plans, in general most small plans are maintained by small employers. Both small and large plans may enlist small third party service providers to perform administrative functions, but it is generally understood that third party service providers transfer their costs to their plan clients in the form of fees. Thus, PWBA believes that assessing the impact of this rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (5 U.S.C. 631 *et seq.*). PWBA solicited comments on the use of this standard for evaluating the effects of the proposal on small entities. No comments were received with respect to the standard. Therefore, a summary of the final regulatory flexibility analysis based on the 100 participant size standard is presented below.

PWBA is promulgating this regulation because it is required to do so under section 401(b) of the Child Support Performance and Incentive Act of 1998 (CSPIA) (Pub. L. 105–200). CSPIA requires the Department of Labor and the Department of Health and Human Services (HHS) to jointly develop and promulgate by regulation a National Medical Support Notice (Notice). The content of the Notice is prescribed by the statute. Thus, as outlined in the economic analysis section of this preamble, the benefits and costs attributable to the regulation are those associated with the discretion exercised by the Department only in the format of the Notice. The statute affords no regulatory discretion with respect to application of the statutory requirements to entities of differing sizes. Nevertheless, analysis of the impact of the regulation indicates that in the aggregate, small plans with between 10 and 99 participants will benefit from standardization of medical support Notices, and that net benefits to these plans will grow progressively larger over time. Very small plans, those with fewer than 10 participants, are not expected to be affected by this rulemaking because it is assumed that due to the infrequency of their receipt of Notices, these plans will continue to handle medical child support notices as they do in the existing environment.

The objective of the regulation is to introduce Part B—Medical Support Notice to Plan Administrator (Part B), which implements section 609(a)(5)(C) of Title I of ERISA, which was added by section 401(d) of CSPIA. Section 609(a)(5)(C) of ERISA provides that a Notice is deemed to be a Qualified Medical Child Support Order (QMCSO) if the plan administrator of a group health plan which is maintained by the employer of a noncustodial parent or to which the employer contributes, receives an appropriately completed

Notice which meets the requirements for a qualified medical child support order under section 609(a)(3) and (4) of ERISA (which provides the informational requirements for a qualified order and restrictions on new types of benefits). New ERISA section 609(a)(5)(C) also establishes new requirements for plan administrators to enroll alternate recipient(s) in a group health plan and to notify the appropriate state agency, noncustodial parent, custodial parent and alternate recipient(s). Thus, the legal basis for the regulation is found in ERISA section 609(a)(5); an extensive list of authorities may be found in the Statutory Authority section, below.

The direct impact of compliance with Part B of the Notice will fall upon ERISA-covered group health plans. Plans with 10 to 99 participants will benefit from a net aggregate reduction in costs under the standardized Notice system. Their baseline cost to process Notices is estimated at $7.6 million, or $85 per plan, annually. Under the regulation, the combined cost to process Notices and establish new procedures to process standardized Notices will decline from $11.4 million, or $127 per plan, in year one to $7.4 million, or $83 per plan, in year three. The savings will increase in subsequent years as the start-up investment is recouped by more plans.

Plans with fewer than 10 participants receive Notices infrequently and therefore would be unlikely to recoup start-up costs from future savings from processing subsequent Notices. These plans therefore are not expected to establish new procedures for processing standardized notices but will continue to incur baseline costs of $2.3 million, or $81 per plan, annually.

The basis for these estimates is summarized in the discussion of Executive order 12866, presented above.

No federal rules have been identified that duplicate, overlap, or conflict with this regulation. As discussed previously in the economic analysis under the Executive Order, a number of alternatives to this regulation were considered. At least three distinct versions of the Notice were developed prior to arriving at this final version. Prior drafts were critiqued by the Medical Child Support Working Group, which included representatives from the small business community. Based on commentary received from the Working Group and the general public, the Agencies feel that this version of the Notice provides the minimum information necessary to comply with section 609(a)(5)(C) of ERISA and imposes the least economic impact on small entities. The establishment of different compliance requirements or an exemption from compliance for small entities was not considered in light of the goal of this rulemaking. Differing compliance schemes for small entities would frustrate the objective of providing a nationally uniform medical child support notice to be used by all State Agencies and to be easily identified by employers, plan administrators and parents.

Federalism Statement Under Executive Order 13132

When an agency promulgates a regulation that has federalism implications, Executive Order 13132 (64 FR 43255, August 10, 1999) requires the agency to provide a federalism summary impact statement. Pursuant to section 6(c) of the Order, such a statement must include a description of the agency's consultation with State and local officials, a summary of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the regulation meets the concerns of State and local officials. This final regulation has been identified as having federalism implications within the meaning of the Order.

This regulation is mandated by provisions of the Child Support Performance and Incentive Act (CSPIA) that were enacted in response to difficulties that State child support enforcement agencies had experienced in enforcing medical child support orders. In particular, many State agencies, as well as the National Child Support Enforcement Association, an organization representing State child support enforcement agencies, participated in the legislative process that resulted in CSPIA's passage. CSPIA provided specific guidance on the content of the National Medical Support Notice (Notice) and provided for the establishment of the Medical Child Support Working Group, which included seven representatives of State child support enforcement directors and State Medicaid/SCHIP directors. This group was tasked by statute to make recommendations based on assessments of the form and content of the Notice, which it provided both prior to its issuance in proposed form as well as during the comment period. In addition, approximately 15 State child support enforcement agencies submitted comments on the proposed regulation independently during the comment period. These recommendations proved very helpful to the Departments in developing the final regulation.

State representatives generally supported the development of the Notice. They viewed the Notice as necessary to overcome difficulties that State agencies had previously experienced in securing medical child support from group health plans available to noncustodial parents. The Department agreed that the Notice was needed not only to comply with CSPIA's mandate to issue regulations, but also to maximize access to private group health insurance for children. The following discussion summarizes the major concerns of State agencies and the responses offered by the Department in the final regulation.

Early in the development of the Notice, State representatives on the Working Group made recommendations which guided the Departments in developing the format of the Notice. State representatives expressed a strong preference that the Notice resemble to the extent possible the uniform Order/Notice to Withhold Income for Child Support currently used by State agencies to enforce child support orders. They noted that this standardized withholding form has facilitated child support income withholding and is already familiar to employers. Also, State representatives requested that the Notice include a feedback loop to the Issuing Agency in the event that coverage was not available to the noncustodial parent through the employer's group health plan. The Departments agreed that incorporating both features would ease the enforcement of medical child support obligations.

In comments received following the publication of the proposal, State agencies generally objected to the requirement to choose from among the options available under the noncustodial parent's group health plan. They also objected to the possibility that selecting the most appropriate option for the child could entail changing the noncustodial parent's existing coverage. State representatives stated that they lacked the resources and expertise necessary to make such decisions and requested that the choice be either automatic or made by another party. In response, the Department included several default options intended to automate the selection as much as possible, minimizing the instances in which the Issuing Agency must choose. These default options have eliminated the possibility that a noncustodial parent's existing coverage would change based on a selection by the Issuing Agency. However, in cases where the group health plan offers multiple coverage options and the noncustodial

parent has not elected coverage, the Department determined that it was most appropriate for the Issuing Agency to make the selection. The Department concluded that, in this narrow range of cases, the Issuing Agency is in the best position to make the selection consistent with the best interests of the child.

In addition, in cases where the Issuing Agency must choose a coverage option from several available under a group health plan, State agencies requested that the Plan Administrator Response of Part B of the Notice indicate whether the various options serve geographically limited areas, and the additional cost to the participant to enroll the child(ren) in each option. State agencies stated that this information would assist them in making coverage selections. After much deliberation, the Department decided not to require this information directly on the Plan Administrator Response. Instead the Department has included a requirement that the plan administrator provide descriptions of each option to the Issuing Agency which include this information, such as summary plan descriptions. In the interest of expediting the processing of Notices, reducing the length of the Notice, and easing the burden on plan administrators, the Department has not required plan administrators to duplicate this information on the Plan Administrator Response.

State agencies requested that the Notice clarify that it applies both to ERISA-covered and non-ERISA plans as intended by CSPIA. They commented that non-ERISA plans may not honor the Notice because much of the language in the proposed Notice referred to ERISA. In response, the Department included language in the Notice clarifying its application to State and local government plans, as well as church plans, and eliminated some of the ERISA legal terminology.

States requested that they be informed when a noncustodial parent is not eligible for coverage under the employer's group health plan due to a waiting period and that the Notice clarify the obligations of the parties when a waiting period applies. State agencies noted that in the case of a long waiting period, it may be in the best interest of the child to attempt to secure alternative coverage during such a waiting period. The Department responded by including in the Plan Administrator Response a mechanism for the plan administrator to notify the Issuing Agency that a long or indeterminate waiting period applies. In addition, the preamble and the instructions on Part B of the Notice clarify that, in any case in which such a waiting period applies, enrollment will be processed upon the satisfaction of the waiting period. When a shorter waiting period applies (less than 90 days) the Plan Administrator Response includes a space for the plan administrator to indicate when coverage will become effective, accounting for any remaining days in such a waiting period.

Regarding the type of health care coverage selection on Parts A and B, several State agencies commented that many child support orders are general in nature and do not order specific types of coverage. They requested that this portion of the Notice include a general selection such as "any health coverage available" rather than requiring the Issuing Agency to select from a specific type of coverage. The Department included such a selection in the final Notice as well as guidance in the regulation directing plan administrators to provide all available coverage where the Issuing Agency has failed to indicate any type of coverage.

Small Business Regulatory Enforcement Fairness Act

The rule in this action is subject to the provisions of the Small Business Regulatory Enforcement Act of 1996 (5 U.S.C. 801 *et seq.*) (SBREFA), and has been transmitted to Congress and the Comptroller General for review.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this rule does not include any Federal mandate that may result in the expenditure by state, local and tribal governments in the aggregate, or by the private sector, of $100,000,000 or more in any one year.

Statutory Authority

Sections 505 and 609(e) of ERISA (Pub. L. 93–406, 88 Stat. 894, 29 U.S.C. 1135 & 1169(e)). Section 401(b) of CSPIA (Pub. L. 105–200, 112 Stat. 645).

List of Subjects in 29 CFR Part 2590

Employee benefit plans, Health care, Medical child support, Pensions, Reporting and recordkeeping requirements.

For the reasons set forth above, Part 2590 of Title 29 of the Code of Federal Regulations is amended as follows:

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLAN REQUIREMENTS

1. The part heading is revised to read as shown above.

2. The authority citation for part 2590 is revised to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1171, 1194; Sec. 4301, Pub. L. 103–66, 107 Stat. 372 (29 U.S.C. 1169); Sec. 101, Pub. Law 104–191, 101 Stat. 1936 (29 U.S.C. 1181); Secretary of Labor's Order No. 1–87, 52 FR 13139, April 21, 1987.

3. Part 2590 is amended by redesignating Subparts A, B, and C as Subparts B, C, and D, respectively and a new Subpart A is added to read as follows:

Subpart A—Continuation Coverage, Qualified Medical Child Support Orders, Coverage for Adopted Children

§ 2590.609–1 [Reserved]

§ 2590.609–2 National Medical Support Notice.

(a) This section promulgates the National Medical Support Notice (the Notice), as mandated by section 401(b) of the Child Support Performance and Incentive Act of 1998 (Pub. L. 105–200). If the Notice is appropriately completed and satisfies paragraphs (3) and (4) of section 609(a) of the Employee Retirement Income Security Act (ERISA), the Notice is deemed to be a qualified medical child support order (QMCSO) pursuant to ERISA section 609(a)(5)(C). Section 609(a) of ERISA delineates the rights and obligations of the alternate recipient (child), the participant, and the group health plan under a QMCSO. A copy of the Notice is available on the Internet at http://www.dol.gov/dol/pwba.

(b) For purposes of this section, a plan administrator shall find that a Notice is appropriately completed if it contains the name of an Issuing Agency, the name and mailing address (if any) of an employee who is a participant under the plan, the name and mailing address of one or more alternate recipient(s) (child(ren) of the participant) (or the name and address of a substituted official or agency which has been substituted for the mailing address of the alternate recipient(s)), and identifies an underlying child support order.

(c)(1) Under section 609(a)(3)(A) of ERISA, in order to be qualified, a medical child support order must clearly specify the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate recipient covered by the order, except that, to the extent provided in the order, the name and mailing address of an official of a State or a political subdivision thereof may be substituted for the mailing address of any such alternate recipient. Section 609(a)(3)(B) of ERISA requires a

reasonable description of the type of coverage to be provided to each such alternate recipient, or the manner in which such type of coverage is to be determined. Section 609(a)(3)(C) of ERISA requires that the order specify the period to which such order applies.

(2) The Notice satisfies ERISA section 609(a)(3)(A) by including the necessary identifying information described in § 2590.609–2(b).

(3) The Notice satisfies ERISA section 609(a)(3)(B) by having the Issuing Agency identify either the specific type of coverage or all available group health coverage. If an employer receives a Notice that does not designate either specific type(s) of coverage or all available coverage, the employer and plan administrator should assume that all are designated. The Notice further satisfies ERISA section 609(a)(3)(B) by instructing the plan administrator that if a group health plan has multiple options and the participant is not enrolled, the Issuing Agency will make a selection after the Notice is qualified, and, if the Issuing Agency does not respond within 20 days, the child will be enrolled under the plan's default option (if any).

(4) Section 609(a)(3)(C) of ERISA is satisfied because the Notice specifies that the period of coverage may only end for the alternate recipient(s) when similarly situated dependents are no longer eligible for coverage under the terms of the plan, or upon the occurrence of certain specified events.

(d)(1) Under ERISA section 609(a)(4), a qualified medical child support order may not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan, except to the extent necessary to meet the requirements of a law relating to medical child support described in section 1908 of the Social Security Act, 42 U.S.C. 1396g–1.

(2) The Notice satisfies the conditions of ERISA section 609(a)(4) because it requires the plan to provide to an alternate recipient only those benefits that the plan provides to any dependent of a participant who is enrolled in the plan, and any other benefits that are necessary to meet the requirements of a State law described in such section 1908.

(e) For the purposes of this section, an "Issuing Agency" is a State agency that administers the child support enforcement program under Part D of Title IV of the Social Security Act.

Signed at Washington, DC this December 15, 2000.

Leslie Kramerich,

Acting Assistant Secretary, Pension and Welfare Benefits Administration, Department of Labor.

Note: The following appendix will not appear in the Code of Federal Regulations.

BILLING CODE 4510–29–P

APPENDIX

NATIONAL MEDICAL SUPPORT NOTICE

PART A

NOTICE TO WITHHOLD FOR HEALTH CARE COVERAGE

This Notice is issued under section 466(a)(19) of the Social Security Act, section 609(a)(5)(C) of the Employee Retirement Income Security Act of 1974 (ERISA), and for State and local government and church plans, sections 401(e) and (f) of the Child Support Performance and Incentive Act of 1998.

Issuing Agency: _____ Issuing Agency Address: _____ _____ Date of Notice: _____ Case Number: _____ Telephone Number: _____ FAX Number: _____	Court or Administrative Authority: _____ Date of Support Order: _____ Support Order Number: _____

_____)
Employer/Withholder's Federal EIN Number

_____)
Employer/Withholder's Name

_____)
Employer/Withholder's Address

_____)
Custodial Parent's Name (Last, First, MI)

_____)
Custodial Parent's Mailing Address

_____)
Child(ren)'s Mailing Address (if different from Custodial Parent's)

_____)
_____)
_____)
Name, Mailing Address, and Telephone Number of a Representative of the Child(ren)

RE* _____
Employee's Name (Last, First, MI)

_____
Employee's Social Security Number

_____
Employee's Mailing Address

_____
Substituted Official/Agency Name and Address

Child(ren)'s Name(s)	DOB	SSN	Child(ren)'s Name(s)	DOB	SSN
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

The order requires the child(ren) to be enrolled in [ ] any health coverages available; or [] only the following coverage(s): __Medical; __Dental; __Vision; __Prescription drug; __Mental health; __Other (specify): _____

THE PAPERWORK REDUCTION ACT OF 1995 (P.L. 104-13) Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of 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. OMB control number: 0970-0222 Expiration Date: 12/31/2003.

EMPLOYER RESPONSE

If either 1, 2, or 3 below applies, check the appropriate box and return this Part A to the Issuing Agency within 20 business days after the date of the Notice, or sooner if reasonable. NO OTHER ACTION IS NECESSARY. If neither 1, 2, nor 3 applies, forward Part B to the appropriate plan administrator(s) within 20 business days after the date of the Notice, or sooner if reasonable. Check number 4 and return this Part A to the Issuing Agency if the Plan Administrator informs you that the child(ren) is/are enrolled in an option under the plan for which you have determined that the employee contribution exceeds the amount that may be withheld from the employee's income due to State or Federal withholding limitations and/or prioritization.

□ 1. Employer does not maintain or contribute to plans providing dependent or family health care coverage.

□ 2. The employee is among a class of employees (for example, part-time or non-union) that are not eligible for family health coverage under any group health plan maintained by the employer or to which the employer contributes.

□ 3. Health care coverage is not available because employee is no longer employed by the employer:

Date of termination: _____

Last known address: _____

Last known telephone number: _____

New employer (if known): _____

New employer address: _____

New employer telephone number: _____

□ 4. State or Federal withholding limitations and/or prioritization prevent the withholding from the employee's income of the amount required to obtain coverage under the terms of the plan.

Employer Representative:

Name: _____ Telephone Number: _____

Title: _____ Date: _____

EIN (if not provided by Issuing Agency on Notice to Withhold for Health Care Coverage):_____

INSTRUCTIONS TO EMPLOYER

This document serves as notice that the employee identified on this National Medical Support Notice is obligated by a court or administrative child support order to provide health care coverage for the child(ren) identified on this Notice. This National Medical Support Notice replaces any Medical Support Notice that the Issuing Agency has previously served on you with respect to the employee and the children listed on this Notice.

The document consists of **Part A - Notice to Withhold for Health Care Coverage** for the employer to withhold any employee contributions required by the group health plan(s) in which the child(ren) is/are enrolled; and **Part B - Medical Support Notice to the Plan Administrator**, which must be forwarded to the administrator of each group health plan identified by the employer to enroll the eligible child(ren).

EMPLOYER RESPONSIBILITIES

1. If the individual named above is not your employee, or if family health care coverage is not available, please complete item 1, 2, or 3 of the Employer Response as appropriate, and return it to the Issuing Agency. NO FURTHER ACTION IS NECESSARY.

2. If family health care coverage is available for which the child(ren) identified above may be eligible, you are required to:

   a. Transfer, not later than 20 business days after the date of this Notice, a copy of **Part B - Medical Support Notice to the Plan Administrator** to the administrator of each appropriate group health plan for which the child(ren) may be eligible, and

   b. Upon notification from the plan administrator(s) that the child(ren) is/are enrolled, either

      1) withhold from the employee's income any employee contributions required under each group health plan, in accordance with the applicable law of the employee's principal place of employment and transfer employee contributions to the appropriate plan(s), or

      2) complete item 4 of the Employer Response to notify the Issuing Agency that enrollment cannot be completed because of prioritization or limitations on withholding.

   c. If the plan administrator notifies you that the employee is subject to a waiting period that expires more than 90 days from the date of its receipt of **Part B of** this Notice, or whose duration is determined by a measure other than the passage of time (for example, the completion of a certain number of hours worked), notify

the plan administrator when the employee is eligible to enroll in the plan and that this Notice requires the enrollment of the child(ren) named in the Notice in the plan.

LIMITATIONS ON WITHHOLDING

The total amount withheld for both cash and medical support cannot exceed ___% of the employee's aggregate disposable weekly earnings. The employer may not withhold more under this National Medical Support Notice than the lesser of:

1. The amounts allowed by the Federal Consumer Credit Protection Act (15 U.S.C., section 1673(b));

2. The amounts allowed by the State of the employee's principal place of employment; or

3. The amounts allowed for health insurance premiums by the child support order, as indicated here:_____.

The Federal limit applies to the aggregate disposable weekly earnings (ADWE). ADWE is the net income left after making mandatory deductions such as State, Federal, local taxes; Social Security taxes; and Medicare taxes.

PRIORITY OF WITHHOLDING

If withholding is required for employee contributions to one or more plans under this notice and for a support obligation under a separate notice and available funds are insufficient for withholding for both cash and medical support contributions, the employer must withhold amounts for purposes of cash support and medical support contributions in accordance with the law, if any, of the State of the employee's principal place of employment requiring prioritization between cash and medical support, as described here:_____
_____.

DURATION OF WITHHOLDING

The child(ren) shall be treated as dependents under the terms of the plan. Coverage of a child as a dependent will end when similarly situated dependents are no longer eligible for coverage under the terms of the plan. However, the continuation coverage provisions of ERISA may entitle the child to continuation coverage under the plan. The employer must continue to withhold employee contributions and may not disenroll (or eliminate coverage for) the child(ren) unless:

1. The employer is provided satisfactory written evidence that:

a. The court or administrative child support order referred to above is no longer in effect; or

b. The child(ren) is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment from the plan; or

2. The employer eliminates family health coverage for all of its employees.

POSSIBLE SANCTIONS

An employer may be subject to sanctions or penalties imposed under State law and/or ERISA for discharging an employee from employment, refusing to employ, or taking disciplinary action against any employee because of medical child support withholding, or for failing to withhold income, or transmit such withheld amounts to the applicable plan(s) as the Notice directs.

NOTICE OF TERMINATION OF EMPLOYMENT

In any case in which the above employee's employment terminates, the employer must promptly notify the Issuing Agency listed above of such termination. This requirement may be satisfied by sending to the Issuing Agency a copy of any notice the employer is required to provide under the continuation coverage provisions of ERISA or the Health Insurance Portability and Accountability Act.

EMPLOYEE LIABILITY FOR CONTRIBUTION TO PLAN

The employee is liable for any employee contributions that are required under the plan(s) for enrollment of the child(ren) and is subject to appropriate enforcement. The employee may contest the withholding under this Notice based on a mistake of fact (such as the identity of the obligor). Should an employee contest the withholding under this Notice, the employer must proceed to comply with the employer responsibilities in this Notice until notified by the Issuing Agency to discontinue withholding. To contest the withholding under this Notice, the employee should contact the Issuing Agency at the address and telephone number listed on the Notice. With respect to plans subject to ERISA, it is the view of the Department of Labor that Federal Courts have jurisdiction if the employee challenges a determination that the Notice constitutes a Qualified Medical Child Support Order.

CONTACT FOR QUESTIONS

If you have any questions regarding this Notice, you may contact the Issuing Agency at the address and telephone number listed above.

NATIONAL MEDICAL SUPPORT NOTICE OMB NO. 1210-0113

PART B

MEDICAL SUPPORT NOTICE TO PLAN ADMINISTRATOR

This Notice is issued under section 466(a)(19) of the Social Security Act, section 609(a)(5)(C) of the Employee Retirement Income Security Act of 1974, and for State and local government and church plans, sections 401(e) and (f) of the Child Support Performance and Incentive Act of 1998. Receipt of this Notice from the Issuing Agency constitutes receipt of a Medical Child Support Order under applicable law. The rights of the parties and the duties of the plan administrator under this Notice are in addition to the existing rights and duties established under such law.

Issuing Agency: _____ Issuing Agency Address: _____ _____ Date of Notice: _____ Case Number: _____ Telephone Number: _____ FAX Number: _____	Court or Administrative Authority: _____ Date of Support Order: _____ Support Order Number: _____

_____)
Employer/Withholder's Federal EIN Number

_____)
Employer/Withholder's Name

_____)
Employer/Withholder's Address

_____)
Custodial Parent's Name (Last, First, MI)

_____)
Custodial Parent's Mailing Address

_____)
Child(ren)'s Mailing Address (if Different from Custodial Parent's)

_____)
_____)
_____)
Name(s), Mailing Address, and Telephone Number of a Representative of the Child(ren)

RE* _____
Employee's Name (Last, First, MI)

_____
Employee's Social Security Number

_____
Employee's Address

_____
Substituted Official/Agency Name and Address

Child(ren)'s Name(s)	DOB	SSN	Child(ren)'s Name(s)	DOB	SSN
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

The order requires the child(ren) to be enrolled in [] any health coverages available; or [] only the following coverage(s): __medical; __dental; __vision; __prescription drug; __mental health; __other (specify):_____

PLAN ADMINISTRATOR RESPONSE

(To be completed and returned to the Issuing Agency within 40 business days after the date of the Notice, or sooner if reasonable)

This Notice was received by the plan administrator on _____.

□ 1. This Notice was determined to be a "qualified medical child support order," on _____. Complete **Response 2 or 3, and 4**, if applicable.

2. The participant (employee) and alternate recipient(s) (child(ren)) are to be enrolled in the following family coverage.

□ a. The child(ren) is/are currently enrolled in the plan as a dependent of the participant.

□ b. There is only one type of coverage provided under the plan. The child(ren) is/are included as dependents of the participant under the plan.

□ c. The participant is enrolled in an option that is providing dependent coverage and the child(ren) will be enrolled in the same option.

□ d. The participant is enrolled in an option that permits dependent coverage that has not been elected; dependent coverage will be provided.

Coverage is effective as of __/__/____(includes waiting period of less than 90 days from date of receipt of this Notice). The child(ren) has/have been enrolled in the following option: _____. Any necessary withholding should commence if the employer determines that it is permitted under State and Federal withholding and/or prioritization limitations.

□ 3. There is more than one option available under the plan and the participant is not enrolled. The Issuing Agency must select from the available options. Each child is to be included as a dependent under one of the available options that provide family coverage. If the Issuing Agency does not reply within 20 business days of the date this Response is returned, the child(ren), and the participant if necessary, will be enrolled in the plan's default option, if any: _____.

□ 4. The participant is subject to a waiting period that expires __/__/____ (more than 90 days from the date of receipt of this Notice), or has not completed a waiting period which is determined by some measure other than the passage of time, such as the completion of a certain number of hours worked (describe here: _____). At the completion of the waiting period, the plan administrator will process the enrollment.

□ 5. This Notice does not constitute a "qualified medical child support order" because:

□ The name of the □ child(ren) or □ participant is unavailable.

□ The mailing address of the □ child(ren) (or a substituted official) or □ participant is unavailable.

□ The following child(ren) is/are at or above the age at which dependents are no longer eligible for coverage under the plan _____ (insert name(s) of child(ren)).

Plan Administrator or Representative:

Name: _____ Telephone Number: _____

Title: _____ Date: _____

Address:_____

INSTRUCTIONS TO PLAN ADMINISTRATOR

This Notice has been forwarded from the employer identified above to you as the plan administrator of a group health plan maintained by the employer (or a group health plan to which the employer contributes) and in which the noncustodial parent/participant identified above is enrolled or is eligible for enrollment.

This Notice serves to inform you that the noncustodial parent/participant is obligated by an order issued by the court or agency identified above to provide health care coverage for the child(ren) under the group health plan(s) as described on **Part B**.

(A) If the participant and child(ren) and their mailing addresses (or that of a Substituted Official or Agency) are identified above, and if coverage for the child(ren) is or will become available, this Notice constitutes a "qualified medical child support order"(QMCSO) under ERISA or CSPIA, as applicable. (If any mailing address is not present, but it is reasonably accessible, this Notice will not fail to be a QMCSO on that basis.) You must, within 40 business days of the date of this Notice, or sooner if reasonable:

(1) Complete Part B - Plan Administrator Response - and send it to the Issuing Agency:

(a) if you checked Response 2:

(i) notify the noncustodial parent/participant named above, each named child, and the custodial parent that coverage of the child(ren) is or will become available (notification of the custodial parent will be deemed notification of the child(ren) if they reside at the same address);

(ii) furnish the custodial parent a description of the coverage available and the effective date of the coverage, including, if not already provided, a summary plan description and any forms, documents, or information necessary to effectuate such coverage, as well as information necessary to submit claims for benefits;

(b) if you checked Response 3:

(i) if you have not already done so, provide to the Issuing Agency copies of applicable summary plan descriptions or other documents that describe available coverage including the additional participant contribution necessary to obtain coverage for the child(ren) under each option and whether there is a limited service area for any option;

(ii) if the plan has a default option, you are to enroll the child(ren) in the default option if you have not received an election from the Issuing Agency within 20 business days of the date you returned the Response. If the plan does not have a default option, you are to enroll the child(ren) in the option selected by the Issuing Agency.

(c) if the participant is subject to a waiting period that expires more than 90 days from the date of receipt of this Notice, or has not completed a waiting period whose duration is determined by a measure other than the passage of time (for example, the completion of a certain number of hours worked), complete Response 4 on the Plan Administrator Response and return to the employer and the Issuing Agency, and notify the participant and the custodial parent; and upon satisfaction of the period or requirement, complete enrollment under Response 2 or 3, and

(d) upon completion of the enrollment, transfer the applicable information on Part B - Plan Administrator Response to the employer for a determination that the necessary employee contributions are available. Inform the employer that the enrollment is pursuant to a National Medical Support Notice.

(B) If within 40 business days of the date of this Notice, or sooner if reasonable, you determine that this Notice does not constitute a QMCSO, you must complete Response 5 of Part B - Plan Administrator Response and send it to the Issuing Agency, and inform the noncustodial parent/participant, custodial parent, and child(ren) of the specific reasons for your determination.

(C) Any required notification of the custodial parent, child(ren) and/or participant that is required may be satisfied by sending the party a copy of the Plan Administrator Response, if appropriate.

UNLAWFUL REFUSAL TO ENROLL

Enrollment of a child may not be denied on the ground that: (1) the child was born out of wedlock; (2) the child is not claimed as a dependent on the participant's Federal income tax return; (3) the child does not reside with the participant or in the plan's service area; or (4) because the child is receiving benefits or is eligible to receive benefits under the State Medicaid plan. If the plan requires that the participant be enrolled in order for the child(ren) to be enrolled, and the participant is not currently enrolled, you must enroll both the participant and the child(ren). All enrollments are to be made without regard to open season restrictions.

PAYMENT OF CLAIMS

A child covered by a QMCSO, or the child's custodial parent, legal guardian, or the provider of services to the child, or a State agency to the extent assigned the child's rights, may file claims and the plan shall make payment for covered benefits or reimbursement directly to such party.

PERIOD OF COVERAGE

The alternate recipient(s) shall be treated as dependents under the terms of the plan. Coverage of an alternate recipient as a dependent will end when similarly situated dependents are no longer eligible for coverage under the terms of the plan. However, the continuation coverage provisions of ERISA or other applicable law may entitle the alternate recipient to continue coverage under

the plan. Once a child is enrolled in the plan as directed above, the alternate recipient may not be disenrolled unless:

(1) The plan administrator is provided satisfactory written evidence that either:
(a) the court or administrative child support order referred to above is no longer in effect, or
(b) the alternate recipient is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment from the plan;

(2) The employer eliminates family health coverage for all of its employees; or

(3) Any available continuation coverage is not elected, or the period of such coverage expires.

CONTACT FOR QUESTIONS

If you have any questions regarding this Notice, you may contact the Issuing Agency at the address and telephone number listed above.

Paperwork Reduction Act Notice

The Issuing Agency asks for the information on this form to carry out the law as specified in the Employee Retirement Income Security Act or the Child Support Performance and Incentive Act, as applicable. You are required to give the Issuing Agency the information. You are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Issuing Agency needs the information to determine whether health care coverage is provided in accordance with the underlying child support order. The Average time needed to complete and file the form is estimated below. These times will vary depending on the individual circumstances.

	Learning about the law or the form	....	Preparing the form
First Notice	1 hr.__		1 hr., 45 min.
Subsequent Notices	-----		35 min.

[FR Doc. 00–32411 Filed 12–26–00; 8:45 am]
BILLING CODE 4510–29–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Part 303

RIN 0970–AB97

National Medical Support Notice

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, HHS.

ACTION Final rule.

SUMMARY: This rule implements provisions of the Child Support Performance and Incentives Act of 1998 (CSPIA), Public Law 105–200, that require State child support enforcement agencies, under title IV–D of the Social Security Act (the Act), to enforce the health care coverage provision in a child support order through the use of the National Medical Support Notice (NMSN).

A proposed rule was published in the **Federal Register** on November 15, 1999 (64 FR 62074). After consideration of the written comments received, changes have been made in this final regulation, including changes to the NMSN found in the Appendix.

DATES: This regulation is effective January 26, 2001.

FOR FURTHER INFORMATION CONTACT: Elizabeth Matheson, Director, Division of Policy, Office of Child Support Enforcement (OCSE), (202) 401–9386.

SUPPLEMENTARY INFORMATION:

Statutory Authority

This final rule is published under the authority of sections 452(f) and 466(a)(19) of the Social Security Act (the Act), 42 U.S.C. 652(f) and 666(a)(19), as amended by section 401 of the Child Support Performance and Incentive Act of 1998 (CSPIA), Public Law 105–200, and technical amendments in section 4(b) of the Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998, Public Law 105–306.

Also being published in the **Federal Register** today is a parallel final regulation developed by the Department of Labor (DOL) under section 609(a) of the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C.1169(a)), adopting the NMSN. Under ERISA section 609(a)(5)(C), if the NMSN is appropriately completed, and satisfies the conditions of ERISA section 609(a)(3) and (4), the NMSN is deemed to be a "qualified medical child support order" as defined in section 609(a) of ERISA.

In this regulation, OCSE is implementing the provisions of CSPIA that require States to have in effect laws that require procedures to enforce the health care coverage provisions in child support orders through the use of the NMSN. The NMSN notifies the noncustodial parent's employer of the provision for health care coverage of the child in a IV–D case.

Background

The enactment of the Child Support Enforcement Amendments of 1984, Pub. L. 98–378, added a new section 452(f) to the Act that required the Secretary to issue regulations to require State IV–D agencies to secure medical support information, and to secure and enforce medical support obligations whenever health care coverage is available to the noncustodial parent at a reasonable cost. Initially, these regulations were placed in Subpart B at 45 CFR 306.50 and 51. Subsequently, they were redesignated and placed where they appear now at 45 CFR 303.30 and 31. Since the enactment of this legislation and the implementing regulations, States have been making efforts to establish and enforce medical support for children with limited success.

The Omnibus Budget Reconciliation Act of 1993 (OBRA), Pub. L. 103–66, was a significant piece of legislation that contained provisions intended to remove some of the impediments to State IV–D agency attempts to secure and enforce medical coverage for children in IV–D cases. OBRA contained many improvements that facilitated obtaining and enforcing medical coverage, including: prohibiting discriminatory health care coverage practices; creating "qualified medical child support orders" (QMCSOs) to obtain coverage from group health plans subject to ERISA; and allowing employers to deduct the costs of health insurance premiums from the employee/obligor's income. Some of the medical support provisions of OBRA were included as Medicaid State plan requirements under section 1908 of the Act [42 U.S.C. 1396g–1] and required States to enact laws governing employer and insurer compliance with health care provisions of support orders. The QMCSO provisions are contained in section 609 of ERISA (29 U.S.C. 1169).

Section 382 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. 104–193, added a new paragraph 19 to section 466(a) of the Act (466(a)(19)) that requires a provision for health care coverage in all child support orders established or enforced by IV–D agencies. Prior to enactment of PRWORA, IV–D agencies were required to petition for inclusion of medical support in all new and modified IV–D child support orders for cases with an assignment of medical support rights for public assistance cases under titles IV–A, XIX, and IV–E. Individuals not receiving public assistance could choose not to seek medical support. Despite improved medical support requirements (such as procedures for including health care coverage in all child support orders under title IV–D) and a focus on enforcement of medical support by OCSE and the State IV–D programs, the enforcement of medical support coverage for children under the IV–D program has remained problematic.

Extensive consultations with State IV–D agencies, employers, HHS, DOL, and advocates of medical support coverage, resulted in an array of medical support provisions in CSPIA. These provisions were enacted in order to further eliminate barriers that prevent meaningful establishment and enforcement of medical child support coverage.

In addition to the requirements that are contained in this regulation, CSPIA provided for the establishment of a Medical Child Support Working Group. The Working Group was charged with submitting a report to the Secretaries of Health and Human Services and Labor containing recommendations regarding appropriate measures to address impediments to the effective enforcement of medical support by IV–D agencies. The Working Group held a series of meetings beginning in March, 1999. At its final meeting in June, 2000, the MCSWG approved its report to the Secretary of Health and Human Services and the Secretary of Labor. The Working Group's report contains seventy-six recommendations for expansion of health coverage for children eligible for child support enforcement services. The Working Group also submitted comments on the Notice of Proposed Rulemaking published in the **Federal Register** on November 15, 1999 (64 FR 62074). The Working Group included thirty members representing: HHS and DOL, State child support directors, State Medicaid directors, employers (including payroll professionals), sponsors and administrators of group health plans (as defined in section 607(1) of ERISA), organizations representing children potentially eligible for medical support, State medical child support programs, and organizations representing State child support programs.

Section 401 of CSPIA strengthens the enforcement of medical support coverage for children by requiring HHS

and DOL to jointly develop a NMSN to be issued by States to enforce the medical support obligations of a non-custodial parent. The NMSN must comply with requirements of section 609(a)(3) and (4) of ERISA, which pertain to informational requirements and restrictions against requiring new types or forms of benefits. In addition to complying with ERISA requirements and all title IV–D requirements, the NMSN must include a severable employer withholding notice informing the employer of: (1) Applicable provisions of State law requiring the employer to withhold any employee contributions due under any group health plan in connection with coverage required to be provided; (2) the duration of the withholding requirement; (3) the applicability of limitations on any such withholding under title III of the Consumer Credit Protection Act; (4) the applicability of any prioritization required under State law between amounts to be withheld for purposes of cash support and amounts to be withheld for purposes of medical support, in cases where available funds are insufficient for full withholding for both purposes; and (5) the name and telephone number of the appropriate unit or division to contact at the State agency regarding the NMSN.

We believe that employers will welcome the use of a standard form that will be used by all State IV–D agencies as required in these regulations. This will simplify processing for all concerned and most importantly enhance health care coverage for children who are excluded from their noncustodial parent's group health plan.

Section 466(a)(19) of the Act, as amended by section 401(c)(3) of CSPIA, requires States to have in effect laws requiring the use of procedures providing for IV–D agencies to use the NMSN to enforce child support orders which include a provision for the health care coverage of the child. Section 466(a)(19)(B) of the Act requires the use of the NMSN in all cases where the noncustodial parent is required to provide health care coverage for the child pursuant to the order and the noncustodial parent's employer is known to the State agency. The statute provides an exception, under section 466(a)(19)(B), to using the NMSN if a court or administrative order stipulates alternative health care coverage to the noncustodial parent's employment-based coverage.

Under section 466(a)(19)(B)(i), States must use the NMSN to transfer notice of the provision for health care coverage of the child to employers, including State or local governments and churches. Section 466(a)(19)(B)(ii) requires the employer to transfer the NMSN within 20 business days after the date of the NMSN, without the employer withholding notice, to the appropriate plan which provides health care coverage for which the child is eligible. The plan administrator then determines if the Notice is qualified under section 609(a) of ERISA in the case of an ERISA-covered plan, or, in the case of a church plan, section 401(f) of CSPIA.

Upon notification by the plan administrator(s) that enrollment may occur and the amount of employee contribution to withhold, the employer implements the withholding from the employee's income. The employer withholds employee contributions within the limitations on withholding in accordance with the amounts allowed by the State of the employee's principal place of employment (which may equal or be less than that allowed by the Federal Consumer Credit Protection Act (15 U.S.C., section 1673(b)), or the amounts allowed for health insurance premiums by the child support order, whichever is less. If the amount for the premium cannot be withheld due to such limitations on withholding, the child may not be enrolled. The employer also observes the State law of the employee's principal place of employment for prioritization purposes if withholding is required for both cash and medical support payments.

Section 466(a)(19)(B)(iii) of the Act requires, in cases where the noncustodial parent is a newly hired employee, that the State agency send the NMSN, together with the income withholding notice pursuant to section 466(b) of the Act, within two business days after the date the newly hired employee is entered into the State Directory of New Hires, pursuant to section 453A of the Act.

Under section 466(a)(19)(B)(iv) of the Act, when the employment of a noncustodial parent with any employer who has received an NMSN is terminated, the employer is required to notify the State IV–D agency of this termination. Finally, under paragraph (C), any liability of a noncustodial parent employee to a group health plan for contributions necessary for enrollment of a child is subject to appropriate enforcement, unless the employee contests such enforcement based on a mistake of fact.

This section is effective October 1, 2001, or, if later, the effective date of State laws requiring the use of the MSN. Such State laws must be effective no later than the close of the first day of the first calendar quarter that begins after the close of the first regular session of the State legislature that begins after October 1, 2001. For States with 2-year legislative sessions, each year of such session would be regarded as a separate regular session. This deadline provides States ample opportunity to enact implementing State legislation after publication of final regulations.

Description of Regulatory Provisions and Changes Made in Response to Comments

We are implementing the statutory requirement for the development and use of the NMSN by adding a new section, 45 CFR 303.32, "National Medical Support Notice," to existing rules governing the Child Support Enforcement program under title IV–D of the Act. This section restates statutory requirements and includes requirements in paragraphs (c)(5), (7) and (8) in response to comments received on the proposed regulations. These new paragraphs address employee contests to withholding of health plan contributions based on a mistake of fact, procedures for notifying employers to terminate such withholding and procedures for the IV–D agency to select from available options for health care coverage when notified by plan administrators of those options.

Section 303.32(a) requires the State to have laws requiring procedures for the mandatory use of the NMSN in accordance with section 466(a)(19) of the Act.

Section 303.32(b) provides for an exception to the use of the NMSN. The exception applies to cases with court or administrative orders that stipulate alternative health care coverage.

Section 303.32(c) includes the mandatory procedures for enforcement of health care coverage for the child through the use of the NMSN.

Section 303.32(c)(1) requires State IV–D agencies to use the NMSN to provide notice of the provision for health care coverage of the child(ren) to employers.

Section 303.32(c)(2) requires State IV–D agencies to send the NMSN to the employer within two business days after the date of entry into the State Directory of New Hires of an employee who is an obligor in a IV–D case.

Section 303.32(c)(3) requires employers to transfer the NMSN to the appropriate group health care plan providing any such health care coverage for which the child(ren) is eligible (excluding the severable employer withholding notice directing the employer to withhold any mandatory contributions to the plan) within twenty business days after the date of the NMSN.

Section 303.32(c)(4) requires employers to withhold any mandatory employee contributions to the plan and send any employee contributions withheld directly to the plan. Employers are specifically directed to transfer contributions to the plan because employers may also be directed by a separate child support withholding notice to forward support payments withheld from the employee's wages to a State IV–D agency.

Section 303.32(c)(5) was a part of proposed paragraph (c)(4) in the NPRM. Based on comments received on the NPRM, under paragraph (c)(5), employees may contest the withholding based on a mistake of fact. However, the employer must initiate the withholding until such time as the employer receives notice that the contest is resolved.

Section 303.32(c)(6) requires employers to notify the State agency promptly whenever the employment of a noncustodial parent for whom the employer received an NMSN is terminated. This is consistent with the requirement for notification of termination in income withholding cases pursuant to 45 CFR 303.100(e)(1)(x).

Section 303.32(c)(7) was added in response to comments to require the State agency to promptly notify the employer when there is no longer a current order for medical support in effect for which the IV–D agency is responsible.

Section 303.32(c)(8) was added as a result of comments on a provision pertaining to Part B, "Plan Administrator Response" portion of the NMSN. Under section 303.32(c)(8), the IV–D agency must select from available options when the plan administrator returns "Part B" of the NMSN and under item 3 informs the IV–D agency that there is more than one option available under the plan. The IV–D agency must select an option and notify the plan administrator of this selection. This provision will ensure that children are enrolled when a decision must be made if there is more than one option for health care coverage.

To comply with statutory requirements, section 303.32(d) requires enactment of State laws requiring the use of the NMSN. The requirements for using the NMSN must be effective the later of October 1, 2001 or the effective date of implementing State law. Such State laws must be effective no later than the first day of the first calendar quarter beginning after the first regular session of the State legislature that begins after October 1, 2001. For States that have two year legislative sessions, each year of such session would be regarded as a separate regular session.

Description of the National Medical Support Notice and Changes Made in Response to Comments

A State IV–D agency will issue a two-part NMSN, Parts A & B, to an employer who maintains or contributes to a group health plan and who employs a noncustodial parent who is obligated by a court or administrative child support order to provide health coverage for a child(ren). Part A of the NMSN, the Notice to Withhold for Health Care Coverage, is modeled on the federally-approved standardized income withholding form that was issued to State IV–D agencies by action transmittal (OCSE-AT–98–03) on January 27, 1998. Employers have voiced approval of this form indicating that the standardized uniform withholding form has greatly facilitated the processing of child support income attachments.

Part A, Notice To Withhold for Health Care Coverage

Part A, the Notice to Withhold for Health Care Coverage, includes information for, and responsibilities of the employer. In response to comments received on page one of the Notice to Withhold for Health Care Coverage, we clarified that the NMSN applies to State and local government and church health plans. We added the Issuing Agency's fax number. We also replaced "alternate recipient(s)/child(ren)" with "child(ren)", and "employee/obligor" with "employee." We replaced "Court Name" with "Court or Administrative Authority." With respect to the various types of health coverage available, we deleted "under your plan" and replaced "Basic" with "Medical."

On page one of the Notice to Withhold for Health Care Coverage, the issuing agency provides information starting with the name and address of the issuing agency, date of the notice, case number, telephone and fax numbers of the issuing agency, name of court or administrative authority, date of the support order, and the support order number. The issuing agency provides pertinent information with respect to the employer, the employee, the custodial parent, and the child or children. The issuing agency provides the employer's Federal EIN number (if known) and the employer's name and address. Information on the employee is also provided including the employee's name, social security number, and mailing address. Information is provided on the custodial parent, and the child or children, including their names and addresses. If there is a danger of domestic violence and abuse to the custodial parent and/or the children, the IV–D agency may substitute the name of an official as well as its address for the address of the custodial parent and children. Finally, page one includes a provision for the type of family group health care coverage that is required by the order, *i.e.*, any available or medical, dental, vision, prescription drug, mental health, and other. If no option is specified, the employer should send Part B to the administrator of each group health plan for which the child may be eligible.

Throughout the remainder of this preamble, the first page of the Notice to Withhold for Health Care Coverage, Part A, will be referred to as the "case identification data section."

Employer Response

The "Employer Response", attached to Part A, is to be completed by the employer. Under the heading for "Employer Response," we clarified that the employer has twenty business days to forward Part B to the plan administrator if none of the response situations described in boxes 1, 2, and 3 apply. If any one of the three response situations in boxes 1, 2, or 3 apply, the employer must return Part A to the IV–D agency within twenty business days after the date of the notice. If the plan administrator informs the employer that the child(ren) is/are enrolled in an option under the plan for which the employer determines that the employee contribution exceeds the amount that may be withheld from the employee's income due to State or Federal withholding limitations and/or prioritization, the employer must check box 4 and return Part A to the IV–D agency.

The response situations on the "Employer Response" have been clarified and revised. The previous response number 1 has been split into two responses. Response number 1 now reads, "Employer does not maintain or contribute to plans providing dependent or family health coverage." Response number 2 now reads, "The employee is among a class of employees (for example, part-time or non-union) that are not eligible for family health coverage under any group health plan maintained by the employer or to which the employer contributes." Responses 2 and 3 have been redesignated 3 and 4 respectively. In the newly designated response number 3, "Health care coverage is not available because the employee is no longer employed by the employer," we added a new line for the "date of termination" of the employee.

Response number 4, previously designated number 3, was not changed and says, "State or Federal withholding limitations and/or prioritization prevent the withholding from the employee's income of the amount required to obtain coverage under the terms of the plan." On the bottom of the "Employer Response," we added a new line for the employer to provide the "employer identification number" (EIN), if it was not provided by the Issuing Agency in the case identification data section.

Instructions to Employer

In response to comments on the "Instructions to Employer," we made the following changes. We deleted the word "also" from the first sentence in the first paragraph under the heading, "Instructions to Employer". Under the subheading of "Employer Responsibilities," we deleted the opening clause "As the employer of the employee, you are required to:" since it is clear from the heading to this section, "Instructions to Employer," that the instructions apply to the employer. Under subparagraph 2.b.2, we deleted "and the parties" to clarify that if enrollment cannot be completed because of prioritization or limitations on withholding, the employer should complete item 4 of the Employer Response to notify the Issuing Agency. Also, under the subheading of "Employer Responsibilities," we added a new subparagraph 2.c. that instructs the employer, after the plan administrator notifies the employer that the employee is subject to a waiting period that expires more than ninety days from the date of receipt of the Notice, or whose duration is determined by a measure other than the passage of time (for example, the completion of a certain number of hours worked), to notify the plan administrator when the employee is eligible to enroll in the plan and that the Notice requires the enrollment of the child(ren) named in the Notice in the plan.

Under the subheading of "Limitations on Withholding," we clarified that the maximum Consumer Credit Protection Act limit applies to the combined amount withheld for both cash support and for medical support coverage. We clarified that under the National Medical Support Notice, the employer may not withhold, for health insurance premiums, more than the least of: (1) The amounts allowed by the Federal Consumer Credit Protection Act (15 U.S.C. section 1673(b)); (2) the amounts allowed by the State of the employee's principal place of employment; or (3) the amounts allowed for health insurance premiums by the child support order. In the NPRM, item three previously read, "The amounts allowed for medical support by the child support order." As noted above, we revised item three. The purpose of this change is to differentiate between employee contributions, or premiums, for health coverage paid to the plan administrator, and cash medical support collected by the IV–D agency under a separate income withholding order which is paid to the custodial parent. (The income withholding form, rather than the NMSN, is used to withhold cash medical support when specifically designated in an order).

Under the subheading of "Priority of Withholding" in this section, we added space for the IV–D agency to provide State specific information regarding the prioritization of withholding payment.

Under the subheading of "Notice of Termination of Employment," we made minor changes by eliminating unnecessary words.

Under the subheading of "Employee Liability for Contribution to Plan," we clarified the language regarding contests. We added clarifying language to the second, third and fourth sentences to indicate that the employee may contest the withholding under this Notice based on a mistake of fact. The second sentence reads, "The employee may contest the withholding under this Notice based on a mistake of fact (such as the identity of the obligor)." In the third sentence, we added the language, "by the Issuing Agency". The third sentence says, "Should an employee contest the withholding under this Notice, the employer must proceed to comply with the employer responsibilities in this Notice until notified by the Issuing Agency to discontinue withholding." In order to clarify who the employee should contact in order to contest enforcement, we added the fourth sentence: "To contest withholding under this Notice, the employee should contact the Issuing Agency at the address and telephone number listed on the Notice." Finally, we added a sentence to make clear that if an employee wishes to contest a determination that the NMSN is a qualified medical child support order with respect to an ERISA covered plan, DOL has taken the position that the contest must be made in Federal court. The last sentence under the subheading, "Employee Liability for Contribution to Plan," says, "With respect to ERISA covered group health plans, it is the view of the Department of Labor that Federal courts have jurisdiction if the employee challenges a determination that the Notice constitutes a Qualified Medical Child Support Order."

We made no changes to the following subheadings in this section, "Duration of Withholding," "Possible Sanctions," and "Contact for Questions."

Under the final DOL regulation published today in the **Federal Register**, Part B of the NMSN, the "Medical Support Notice to Plan Administrator," notifies the administrator of the group health plan in which the named employee is enrolled or eligible for enrollment that the employee is obligated by a court or administrative child support order to provide medical support coverage for the named child(ren). Part B provides the information necessary for the plan administrator to treat the NMSN as a "qualified medical child support order" under section 609(a) of ERISA, and to enroll the child(ren) as dependents of the participant in the group health plan. Part B of the NMSN was also developed to comply with the requirements placed on group health plans under State laws described in section 1908 of the Act, and to accommodate the requirements on State agencies to use automated processing of medical child support orders as well. Part B also includes a "Plan Administrator Response" that is used by the plan administrator to inform the Issuing Agency that either the child has been enrolled or that there are multiple options from which the Issuing Agency must select coverage, that the employee is subject to certain types of waiting periods, or that the order is not qualified. The specific contents of Part B are explained in detail in the DOL regulation published today.

We have attached the final NMSN (including instructions) as an Appendix in the **Federal Register**. However, the NMSN will not be codified in the Code of Federal Regulations.

Response to Comments

We received twenty-six comments in response to the notice of proposed rulemaking published in the **Federal Register** on November 15, 1999. The commenters included State and local governments, national organizations, law firms, private citizens, and the Medical Child Support Working Group (MCSWG).

The MCSWG had a congressional mandate in accordance with CSPIA to make recommendations based on an assessment of the form and content of the NMSN. The MCSWG provided input into the development of the proposed NMSN and submitted extensive comments in response to the NPRM. Many of the MCSWG's comments on the NPRM were consistent with comments received from State IV–D agencies and other commenters on the NMSN. We

were able to incorporate most of the comments provided by the MCSWG with minor exceptions.

We took these comments into consideration in the development of the final rule. Our responses are limited to comments made with respect to the requirements and responsibilities imposed on the State IV–D agencies and the employers of noncustodial parents of children with child support judicial or administrative orders that include a provision for health care coverage. These responses are also limited to comments on Part A of the NMSN.

Also being published in the **Federal Register** today, the Department of Labor (DOL), in a parallel final regulation, has responded to comments focused on the responsibilities and requirements imposed on group health plan administrators in accordance with section 609(a) of ERISA.

Comments on Part 303.32 National Medical Support Notice

Comments to Section 303.32(a) and (b)

1. *Comment:* Three commenters noted that language was unclear in the first sentence of paragraph (a).

Response: We agree and have clarified the first sentence to require that, "States must have laws * * * for the use, where appropriate, of the National Medical Support Notice (NMSN), to enforce * * *."

2. *Comment:* Seven commenters recommended that section 303.32 should indicate throughout it that State IV–D agencies use the NMSN "where appropriate" in accordance with section 466(a)(19)(A) of the Act.

Response: We agree in part. For consistency with section 466(a)(19)(A) of the Act, we added the words "where appropriate" in paragraph (a) of this section. Paragraph (a) requires States to have laws pertaining to the use of the NMSN. The sentence reads, "States must have laws, in accordance with section 466(a)(19) of the Act, requiring procedures specified under paragraph (c) of this section for the use, where appropriate, of the National Medical Support Notice (NMSN) * * *." Given this change to paragraph(a), we do not believe it is necessary to add the language, "where appropriate" to other subsections of section 303.32.

3. *Comment:* Two commenters asked for additional clarification on what constitutes "alternate" coverage in section 303.32(b). Three commenters requested that we provide a list of exceptions that can be construed as alternative coverage and some indication of how much flexibility States have on the use of alternative coverage.

Response: Section 466(a)(19)(B) provides an exception to the requirement that the noncustodial parent provide coverage through his or her employment-related health plan. Section 466(a)(19)(B) says, "unless alternative coverage is allowed for in any order of the court (or other entity issuing the child support order) * * *" Because the statute allows for alternative coverage if stipulated in the order, we believe it is inappropriate to develop a Federal list of exceptions. However, an example of alternative coverage that might be stipulated in an order could be cash contributions for premiums for health insurance coverage provided through the custodial parent's employment. Another example of alternative coverage that might be stipulated in an order could be private coverage, unrelated to the noncustodial parent's employment, such as California's "IV–D Kids Medical Program." States have flexibility to define and allow alternative coverage that meets the health care needs of the child.

4. *Comment:* One commenter suggested that it be made clear that alternative coverage is an alternative to the noncustodial parent's employer-based coverage.

Response: We believe the language is clear on this point. The statute specifically references, in sections 466(a)(19)(B), (B)(iii), and (C) of the Act, the noncustodial parent's obligation to provide medical support and the use of the NMSN to enroll the child(ren) in the noncustodial parent's employment-related health plan. This regulation implements the statutory requirement. As previously noted, however, section 466(a)(19)(B) allows alternative coverage if stipulated in the order, which could be coverage other than the noncustodial parent's employer-based coverage.

5. *Comment:* Two commenters asked whether the Medicaid program under title XIX and the State Children's Health Insurance Program (SCHIP) under title XXI should be excluded from consideration as alternative coverage.

Response: Section 466(a)(19)(B) of the Act refers to alternative coverage as coverage allowed for in a judicial or administrative order. The statute does not preclude medical support under Medicaid or SCHIP from being stipulated in the order as alternative coverage. However, provisions at 45 CFR 303.31(b)(1) preclude IV–D agencies from considering Medicaid as satisfactory health insurance. The Medical Child Support Working Group addressed this issue during its deliberations and recommendations published in June, 2000. We are examining the Working Group's recommendations on this issue.

6. *Comment:* One commenter recommended an expansion of alternative coverage to include any definition of reasonable coverage as defined by State laws and which is not through an employer.

Response: We are bound by section 466(a)(19)(B) of the Act that limits alternative coverage to coverage allowed for in a court or administrative order.

Comments to Section 303.32(c)(1) and (2)

1. *Comment:* One commenter recommended using "send" rather than "transfer" the NMSN to the employer. The commenter indicated that by using the word "transfer" an implication is made that this section only applies to situations in which there is a new employer identified in a case with a known previous employer.

Response: In order to be consistent with the statute at section 466(a)(19)(B)(i), we are retaining the word "transfer" whenever conveyance of the Notice is required. Section 303.32(c)(1) applies in all appropriate cases pursuant to section 303.32(a) regardless of whether or not there is a known previous employer. We are also replacing "send" with "transfer" in section 303.32(c)(2). This provision requires the State agency to transfer the NMSN to the employer within two business days after the date of entry of an employee who is an obligor in a IV–D case in the State Directory of New Hires.

2. *Comment:* One commenter recommended that when a noncustodial parent provides medical coverage that is not employer-related, the NMSN should not be required to be used as a result of information derived from the State Directory of New Hires (SDNH).

Response: As noted at 45 CFR 303.32(a), the NMSN is used to enforce the provision of health care coverage for children of noncustodial parents who are required to provide health care coverage through an employment-related group health plan in accordance with a child support order. If the order specifies coverage that is not employer-related, and the noncustodial parent is providing such coverage, the IV–D agency would not be required to send an NMSN to the employer within two business days as a result of information derived from the SDNH.

3. *Comment:* One commenter indicated that it is unclear whether the obligor must have a child support order in effect at the time the IV–D agency sends the NMSN to the employer.

Response: Yes, there must be an order in effect at the time the IV–D agency sends the NMSN to the employer. The statute at sections 466(a)(19)(A) and (B) of the Act limits the use of the NMSN to enforcement of child support *orders*.

4. *Comment:* One commenter inquired whether the two business day requirement for sending the NMSN to the employer also applies to employment information obtained from other sources.

Response: Section 466(a)(19)(B)(iii) of the Act specifies that in any case in which the noncustodial parent is a newly hired employee entered in the State Directory of New Hires pursuant to section 453A(e) of the Act, the State agency provides, where appropriate, the NMSN, together with the income withholding notice issued pursuant to section 466(b), within two days after the date of entry of such employee in such Directory. The statute does not impose the two day requirement for sending the NMSN when employment information is obtained from other sources.

5. *Comment:* One commenter recommended that enhanced funding be made available to State IV–D agencies to meet the two business day requirement to send the NMSN to the employer after the date of entry in the SDNH.

Response: Section 455(a)(3)(B) of the Act provides States with enhanced (80 percent) Federal financial participation (FFP) to meet the new developmental requirements of PRWORA and the Family Support Act of 1988. States may use funds from their allocation of enhanced FFP to pay for developmental costs of enhancing the Statewide automated system to generate the NMSN. However, the ongoing maintenance costs of the system for actually transferring the NMSN to the employer is considered a regular program administrative cost that is eligible for FFP at the 66 percent matching rate pursuant to 45 CFR 307.35. The use of enhanced funds would require the submittal of an advance planning document (APD) to the Federal Office of Child Support Enforcement in accordance with 45 CFR 307.15.

Comments to Section 303.32(c)(3)

1. *Comment:* Two States believe that the twenty business day time frame for employers to send Part B of the NMSN to the plan administrators is too long. Recommendations were made for a shorter time frame of ten business days.

Response: We are bound by the statute at section 466(a)(19)(B)(ii) that prescribes the twenty business day timeframe as the limit that employers have to send the NMSN to plan administrators. It reads, "within twenty business days after the date of the National Medical Support Notice, the employer is required to transfer the Notice * * *" Employers may send the notice sooner since the statute indicates "within 20 business days * * *"

2. *Comment:* One commenter inquired what penalties would be imposed on an employer for failing to transfer the NMSN to the plan administrator within the twenty business day timeframe.

Response: The employer is subject to applicable State laws since these requirements will be incorporated into State law in accordance with sections 466(a)(19) and 454(20) of the Act. State laws should address penalties or consequences to employers for failing to meet the prescribed statutory time frame.

3. *Comment:* One State noted that this paragraph addresses the twenty business day time frame for the employer to transfer the NMSN to the plan administrator, but is silent on the forty business day time frame that plan administrators have to respond to the Notice.

Response: Requirements related to the forty business day time frame are included in the Department of Labor regulation published today.

Comments to Section 303.32(c)(4)

1. *Comment:* One State asked whether the NMSN could be used for income withholding of cash medical support as specified in an order.

Response: No. The NMSN is used to enforce the provision of health care coverage in an order and to enroll children in the noncustodial parent's employer-related health plan. Section 452(f) of the Act requires the Secretary of HHS to issue regulations that require IV–D agencies to include medical support as part of any child support order. The income withholding form, rather than the NMSN, is used to withhold cash medical support if specifically designated in an order. Instructions on the income withholding form (see OCSE Action Transmittal–98–03, number 17a) indicate, "Dollar amount to be withheld for payment of medical support, as appropriate, based on the underlying order."

2. *Comment:* One commenter suggested that the Medicaid program be given the option to pay for health insurance premiums when the Federal or State withholding limitations have been reached.

Response: A State may be able to do this if it elects the option under section 1906 of the Act to enroll individuals under title XIX in cost effective group health plans.

3. *Comment:* One commenter recommended that the IV–D agency not be held liable for IV–D actions taken on medical support in instances where the noncustodial parent makes changes to the medical support provisions of an order without notifying the IV–D agency of such actions.

Response: We are unaware of any circumstances in a IV–D case where an order can be modified without notice to the IV–D agency or to the custodial parent. However, an employee has the opportunity to contest the withholding of employee contributions based on a mistake of fact which would bring errors to the IV–D agency's attention and ensure that withholding is appropriate.

4. *Comment:* Three commenters questioned the provision that requires immediate withholding even though an employee contests such withholding. One State indicated that this is inconsistent with income withholding for child support. The noncustodial parent has a right to contest adverse actions as well as the right to be heard prior to action being taken.

Response: The notice provision in this regulation is consistent with the statutory language regarding income withholding under which income withholding for cash support commences pending resolution of any contest in favor of the employee. Section 466(b)(4)(A) of the Act states, "Such withholding must be carried out in full compliance with all procedural due process requirements of the State, and the State must send notice to each noncustodial parent * * *. (i) that the withholding has commenced; and (ii) of the procedures to follow if the noncustodial parent desires to contest such withholding on the grounds that the withholding or the amount withheld is improper due to a mistake of fact."

5. *Comment:* Two commenters suggested that the regulations should provide that the only basis for contesting the withholding should be mistake of fact or identity of the employee.

Response: We agree and added a new paragraph (c)(5) indicating that employees may contest the withholding based on a mistake of fact. We removed the last sentence in proposed (c)(4) regarding the initiation of withholding until such time that the contest is resolved, and inserted it into the new paragraph (c)(5) pertaining to contests. We also added similar language to the "Instructions to Employer," subheading "Employee Liability for Contribution to Plan," to clarify that an employee may contest the withholding under this Notice based on a mistake of fact.

6. *Comment:* One commenter asked for the contest rules for medical support and income withholding.

Response: Provisions at 45 CFR 303.32(c)(5) limit the circumstance for an employee to contest the withholding to a mistake of fact, such as the identity of the obligor. The procedural rules for hearing contests are determined under State law.

7. *Comment:* Three commenters requested Federal procedures for a contest when an employee's contribution to a medical plan has been inappropriately withheld.

Response: We believe it is more appropriate for States to develop their own specific administrative and operational procedures for contests. Procedures for addressing contests should include procedures for return of inappropriately held funds.

Comments to Former Section 303.32(c)(5)—Now Section 303.32(c)(6)

1. *Comment:* One commenter recommended changing the timeframe for an employer to notify the IV-D agency whenever the noncustodial parent's employment is terminated from "promptly" to a twenty day timeframe.

Response: We are using "promptly" in order to be consistent with the procedures in place for income withholding cases (see 45 CFR 303.100(e)(1)(x)).

Additional Comments on Mandatory Procedures

1. *Comment:* One commenter recommended that the regulation indicate that States must have laws to require employers to follow all of the procedures outlined at 45 CFR 302.32.

Response: We have already done so at 45 CFR 303.32(a) under which States must have laws in accordance with section 466(a)(19) of the Act requiring procedures that are specified under section 303.32(c) for the use of the NMSN. These State laws and procedures are applicable to all paragraphs of this subsection.

2. *Comment:* A commenter recommended that an additional mandatory procedure be added to ensure that the NMSN is binding on the employer and, if applicable, on the plan administrator without regard to the date when the underlying support order was issued.

Response: Under the heading of "Instructions to Employer" in the NMSN, we noted that the NMSN replaces any previous notice that the IV-D agency has sent with respect to the employee and the children listed on the NMSN. We also noted earlier in the preamble that if the NMSN is appropriately completed and satisfies the conditions of ERISA under section 609(a)(3) and (4), the NMSN is deemed to be a qualified medical child support order as defined in section 609(a) of ERISA and binding on all parties concerned. The date the underlying support order was issued, therefore, does not affect the binding nature of the NMSN.

3. *Comment:* One commenter suggested adding additional subsections under paragraph (c), "Mandatory procedures", that would allow the State to amend or terminate the NMSN for the following reasons: as a result of a successful contest by the employee; upon emancipation of any of the children named in the NMSN; upon modification or termination of the medical support order; to add other children to the required coverage; upon determining that the children have other satisfactory health insurance; to correct any mistakes of fact contained in the NMSN; and, upon case closure.

Response: State IV–D agencies have the authority to reissue the NMSN or to terminate the NMSN when appropriate. We do not think it is appropriate to list in the regulatory language every circumstance that may result in amending or terminating the NMSN. However, with respect to notifying the employer when there is no longer a current order for medical support in effect, we have added subparagraph (c)(7) in this regulation. This provision requires the State to have procedures for promptly notifying the employer when there is no longer a current order for medical support in effect.

In response to the commenter's concerns with amending or terminating the NMSN, the IV–D agency could take the following actions:

(a) Result of a successful contest by the employee-Inform the employer that the NMSN is no longer in effect;

(b) Emancipation of child(ren) named in the NMSN-Coverage of the child(ren) named in the NMSN would terminate pursuant to State law;

(c) Modification or termination of the medical support order-Reissue the NMSN if appropriate;

(d) Need to add other children to the required coverage-Reissue the NMSN to add the child(ren);

(e) Upon determining that the children have comparable coverage—the NMSN (Part A) provides notification that the employer must continue to withhold employee contributions and may not disenroll (or eliminate coverage for) the child(ren) unless the employer is provided satisfactory written evidence that the child(ren) is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment from the plan; and

(f) To correct any mistakes of fact contained in the NMSN-Reissue the NMSN in order to make the correction(s).

4. *Comment:* One commenter suggested that a separate section be added to this regulation to provide for a Federal prescription on allocation of withholding in instances where the combined income and medical support withholding would exceed the maximum Consumer Credit Protection Act (CCPA) limits. This should include allocating in accordance with specified priorities between the income withholding for cash child support and for employee contribution premium payments for enrolling the child(ren) through the use of the NMSN.

Response: The Medical Child Support Working Group (MCSWG) made recommendations in its June, 2000 Report on priorities of allocation when there are cases where the combined income withholding for cash child support and employee contributions for premium payments to health administrators for health coverage exceeds the maximum CCPA limits. In response to this comment, we plan to consider the recommendations from the MCSWG before determining whether a Federal allocation standard should be established. In the meantime, the employer must follow the required prioritization on withholding in accordance with the State law of the employee's principal place of employment. We have added additional blank lines to the NMSN (see "Instructions to Employer" under the subheading, "Priority of Withholding") where States may include State specific information regarding prioritization between cash and medical support.

5. *Comment:* One commenter recommended changing the effective date of this regulation to read, "If a change in State law is not required, this section is effective October 1, 2001; if a change in State law is required, this section is effective on the effective date of State laws described in paragraph (a) of this section. Such State laws must * * * separate regular session."

Response: Section 303.32(d) is consistent with section 401(c)(3) of CSPIA, as amended by section 4(b) of Public Law 105–306. The statute requires the effective date to be the later of "(A)October 1, 2001; or (B) the effective date of laws enacted by the legislature of such State implementing such amendments, but in no event later than the first day of the first calendar quarter beginning after the close of the

first regular session of the State legislature that begins after the date specified in subparagraph (A). For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature."

Comments on Part A of the NMSN

Case Identification Data Section

1. *Comment:* Eight commenters recommended changing the title from "Employer Withholding Notice" to "Notice to Enroll."

Response: The statute at section 466(a)(19)(B)(ii) of the Act specifies a "withholding notice" that is severable and retained by the employer. The employer sends the "Part B" portion of the notice to the plan administrator. In response to the comment and for clarity, we have revised the title to read, "Notice to Withhold for Health Care Coverage".

2. *Comment:* One commenter suggested adding a statement that the employer is required by law to enroll the children.

Response: Unless the employer is also his/her plan administrator, the employer does not enroll children into the plan. The plan administrator enrolls children into the plan.

3. *Comment:* Several commenters suggested that the Notice, pursuant to section 401(e) and (f) of CSPIA, should contain language clarifying that the Notice applies to State and local government and church plans. These commenters expressed concern that because the Notice refers specifically to ERISA, it may be misinterpreted as applicable to only ERISA-covered plans.

Response: We agree. We added clarifying language to the case identification data section regarding the use of the NMSN with respect to State and local government and church plans.

4. *Comment:* One commenter recommended adding "administrative authority" to the line in the case identification data section where only "court name" appeared in the NPRM. The commenter made this suggestion to recognize cases in which the order has been issued by an administrative authority other than by a court.

Response: We agree. We added "administrative authority" to this line so that it now says, "Court or Administrative Authority.".

5. *Comment:* Six commenters suggested deleting the term "alternate recipient(s)" from "alternate recipient(s)/child(ren)" and "obligor" from "employee/obligor."

Response: We agree, and for clarity and simplicity, we deleted "alternate recipient(s)" and "obligor" throughout the NMSN so that only "child(ren)" and "employee" will remain.

6. *Comment:* Three commenters expressed concern regarding the confidentiality of the custodial parent's address appearing in the case identification data sections of the NMSN. They recommended that the employer be informed to keep the custodial parent's address confidential and not to disclose that information to the employee.

Response: Information on the children's address is required under section 609(a) of the Employee Retirement Income Security Act of 1974 (ERISA). If a State makes a determination that the custodial parent's or child's address must be safeguarded, the State may substitute the address of the IV–D agency for that of the custodial parent and children.

7. *Comment:* Four commenters recommended adding a line for the IV–D agency fax number to the case identification data section of the NMSN.

Response: We agree. We added a line for the IV–D agency's fax number accordingly.

8. *Comment:* One commenter indicated a problem with understanding the term "basic" type of family group health care coverage listed on the bottom of the NMSN, Part A, and suggested replacing "basic" with "basic/medical" or "major medical."

Response: We replaced "basic" coverage with "medical" coverage. The language on types of coverage noted on the bottom of the case identification data section now reads: "Any health coverages available" or "medical"; "dental"; "vision"; "prescription drug"; "mental health"; and "other.

Employer Response

9. *Comment:* Two commenters indicated that the instructions under the "Employer Response" do not address under what circumstances the employer should complete item 3. Item 3 in the notice of proposed rulemaking said that, "State or Federal withholding limitations and/or prioritization prevent the withholding from the employee's income of the amount required to obtain coverage under the terms of the plan."

Response: We agree that this section needs clarification. In the revised NMSN, we changed number 3 to number 4. We revised the introductory language under "Employer Response" to read, "Check number 4 and return this Part A to the Issuing Agency if the Plan Administrator informs you that the child(ren) is/are enrolled in an option under the plan for which the employee contribution exceeds the amount that may be withheld from the employee's income due to State or Federal withholding limitations and/or prioritization."

10. *Comment:* One commenter suggested removing the parenthetical just below the "Employer Response" heading that in the proposed rule read," (To be completed by Employer, as appropriate)". The commenter suggested that we replace the parenthetical with language regarding the twenty business day timeframe for employers to send the Notice to the plan administrator if none of the situations reflected in responses listed in this section apply. If any one of the situations reflected in the responses listed apply, the commenter recommended that the same twenty business day timeframe be used by the employer to inform the IV–D agency which situation exists as reflected in the list of responses that precludes enrollment of the child(ren) in the health plan.

Response: We agree. We revised the paragraph under the "Employer Response" section to return this part to the IV–D agency within twenty business days after the date of the Notice, or sooner, when any one of the following responses apply: (1) "Employer does not maintain or contribute to plans providing dependent or family health care coverage", or (2) "The employee is among a class of employees (for example, part-time or non-union) that are not eligible for family health care coverage under any group health plan maintained by the employer or to which the employer contributes", or (3) "Health care coverage is not available because the employee is no longer employed by the employer."

11. *Comment:* One commenter recommended adding space for the employer's EIN or employer identification number at the bottom of the "Employer Response" section. This is needed if the EIN is not provided by the Issuing Agency on the Employer Withholding Notice.

Response: We agree. We added space for the EIN in the "Employer Response" section.

12. *Comment:* One commenter asked that the employer be required to provide the cost of the employee's contribution on the "Employer Response" form when the employer returns the response indicating that the withholding limitations have been exceeded.

Response: We are not requiring employers to do so because of the inherent differences involved in each case. We encourage States to contact employers when it may be necessary to have this information.

13. *Comment:* One commenter noted that when coverage is not available, a copy of Part A, that is sent back to the IV–D agency, should not be sent to the custodial parent as instructed in the introductory paragraph under "Employer Response."

Response: We agree. The IV–D agency is responsible for dealing with the custodial parent in a IV–D case, and is therefore responsible for notifying the custodial parent when the IV–D agency is notified that coverage is not available. Requiring employers to also send a copy of Part A to the custodial parent would place an additional burden on employers. We have revised the introductory paragraph of the "Employer Response" to clarify that Part A should not be sent to the custodial parent when coverage is not available. The first sentence in the introductory paragraph now reads, "If either 1, 2, or 3 below applies, check the appropriate box and return this Part A to the Issuing Agency within 20 business days after the date of the Notice, or sooner as reasonable." Similarly, in the new explanatory language regarding box 4 in the introductory paragraph of the "Employer Response," the employer is required to return Part A to the Issuing Agency only. Under "Instructions to Employer," we made a conforming change to subparagraph 2.b.2 under the subheading, "Employer Responsibilities." We deleted "and the parties." Subparagraph 2.b.2. now reads: "Upon notification from the plan administrator(s) that the child(ren) is/are enrolled, either (1) * * * or (2) complete item 4 of the Employer Response to notify the Issuing Agency that enrollment cannot be completed because of prioritization or limitations on withholding."

14. *Comment:* A commenter requested that we add a line for "date of termination" under response 2 on the "Employer Response." A commenter also suggested that, when an employee terminates employment, the form should instruct employers to use box 2 under the "Employer Response" section of Part A of the NMSN that indicates, "Health care coverage is not available because the employee is no longer employed by the employer * * *."

Response: Under "Employer" Response we renumbered Response 2 in the proposed rule to response 3 in the revised form that pertains to the fact that the employee is no longer employed by the employer. We also added a line for "date of termination" under the new response 3.

The new response 3 under the "Employer Response" section of the NMSN is intended to inform the IV–D agency that the employee is no longer employed by the employer *at the time* that the employer receives the NMSN. The requirement for employers to promptly notify the IV–D agency when an employee terminates employment is consistent with the current procedure for income withholding cases.

Instructions to the Employer

15. *Comment:* One commenter suggested having the "Instructions to the Employer" precede the "Employer Response" section because the instructions should be read first before attempting to complete the form. Another commenter requested that Part A and Part B should be placed together at the beginning, followed by the instructions for both Parts.

Response: We decided to maintain the format used in the NPRM. We believe that the current sequence and format of the Notice provides specific clarifying instructions for employers and plan administrators. Part A includes the Notice to Withhold for Health Care Coverage, the Employer Response and the Instructions to Employer. Part B includes the Medical Support Notice to Plan Administrator, the Plan Administrator Response, and the Instructions to Plan Administrator.

16. *Comment:* Three commenters recommended an indication of what actions should be taken when it is known that there is an enrollment waiting period in instances of recent employment. One commenter recommended adding an explanation on the form regarding the employer's role when the plan calls for a waiting period. A waiting period may exist before enrollment can take place because the employee is a new employee or until some other criterion is fulfilled, such as a requirement to complete a certain number of hours worked. The commenter recommended that the employer notify the plan administrator when enrollment can take place upon receipt of notification from the plan administrator that the waiting period will be in effect for a period of more than 90 days from the date of receipt of the Notice or the waiting period's duration is determined by another criterion.

Response: We agree that clarification is needed. We added subparagraph 2.c. under the heading of "Employer Responsibilities" in the "Instructions to Employer" to read: "If the plan administrator notifies you that the employee is subject to a waiting period that expires more than 90 days from the date of its receipt of this Notice, or whose duration is determined by a measure other than the passage of time (for example, the completion of a certain number of hours worked), notify the plan administrator when the employee is eligible to enroll in the plan and that this Notice requires the enrollment of child(ren) named in the Notice in the plan."

17. *Comment:* One commenter suggested deleting the word "also" referring to children that appeared in the proposed notice in the first sentence under the section "Instructions to Employer". The sentence said, "This document serves as notice that the employee identified above is obligated by a court or administrative child support order to provide health care coverage for the child(ren) also identified above."

Response: We agree, and deleted "also" from the sentence. The sentence now reads, "This document serves as notice that the employee identified on this Notice is obligated by a court or administrative child support order to provide health care coverage for the child(ren) identified on this Notice."

18. *Comment:* One commenter recommended deleting the clause, "As the employer of the employee, you are required to:" that appeared in the proposed Notice in the first sentence under the subheading "Employer Responsibilities" in the "Instructions to Employer" section of Part A. The commenter indicated that it is evident that the employer is the employee's employer since this is under the subheading of "Employer Responsibilities" and therefore unnecessary to use this clause.

Response: We agree, and deleted the clause "As the employer of the employee, you are required to:" We listed the employer's responsibilities directly without the previous opening clause.

19. *Comment:* Two commenters recommended adding "medical support" to identify the "Notice" in the second sentence under the section "Instructions to Employer" so that the sentence would read, "This National Medical Support Notice replaces any Medical Support Notice that the Issuing Agency has previously served on you with respect to the employee and the children listed on this Notice."

Response: We agree and added "Medical Support" before "Notice."

20. *Comment:* Three commenters recommended that additional language be added under the subheading of "Limitations of Withholding" in the "Instructions to Employer" section of Part A to indicate that the Consumer Credit Protection Act (CCPA) limit

applies to the combined amounts withheld for cash and medical support.

Response: We agree and have added language so that it now reads, "The total amount withheld for both cash and medical support cannot exceed _____% of the employee's aggregate disposable weekly earnings." We also clarified that under the National Medical Support Notice, the employer may not withhold more than the least of: (1) The amounts allowed by the Federal Consumer Credit Protection Act (15 U.S.C. section 1673(b)); (2) the amounts allowed by the State of the employee's principal place of employment; or (3) the amounts allowed for health insurance premiums by the child support order.

21. *Comment:* One commenter suggested changing the subsection title from "Limitations on Withholding" to "Limitations on Premiums" in the "Instructions to Employer" section in order to avoid confusion for employers who are more accustomed to receiving income withholding notices for cash support.

Response: The limitations on withholding apply to both the amount of cash child support or medical support, whether in the form of cash amounts for medical support or employee contributions to health insurance coverage. Therefore, we have not changed the subheading "Limitations on Withholding" to "Limitations on Premiums."

22. *Comment:* In the "Instructions to Employer", two commenters suggested adding a line under the "Limitations of Withholding" subheading so that the IV–D agency could indicate the amount of cash medical support that may be included in the order.

Response: If cash medical support is included in the order, it is unlikely that the same order would include a provision for health insurance coverage. If required by an income withholding order, an employer sends cash medical support to the IV–D agency. Cash medical support payments, specified in an order, are used for example, to reimburse the custodial parent for medical costs incurred by the custodial parent. The NMSN is used for a different purpose, that is, to enroll children in their noncustodial parent's employment-related health plan. The employer withholds the employee's contribution, or payment of the premium, and sends it to the plan administrator and not to the IV–D agency.

Limitations on withholding are set as a percentage of aggregate earnings. If support is being withheld under a separate income withholding notice, the amount of support being withheld would be specified on that notice and available to the employer. For clarity, we are changing the reference to line 3 under the heading of "Limitations on Withholding", that is in the "Instructions to Employer" section of the NMSN, to read, "The amounts allowed for health insurance premiums by the child support order, as indicated here: ____." This will clarify that the withholding is for employee contributions rather than for cash medical support.

23. *Comment:* Two commenters recommended that additional space be provided under the subheading of "Priority of Withholding" in the "Instructions to Employer" section of the NMSN that appeared in Part A, for the IV–D agency to provide a description of priorities between cash and medical support under State law.

Response: We agree and added additional space under this subheading for that purpose.

24. *Comment:* One commenter asked for a definition of "comparable" coverage under the subheading of "Duration of Withholding at subparagraph 1.b. that allows for disenrollment of a child because the child will be enrolled in comparable coverage.

Response: Comparable coverage means coverage that is similar in scope to the current coverage and that would provide approximately the same type and extent of coverage to the child or children. Although the term "comparable" coverage appears in section 1908(a)(3)(C)(i)(II) of the Act, the term is not explicitly defined. The Health Care Financing Administration is responsible for interpretations of title XIX and intends to promulgate regulations which will include discussion of the term "comparable."

25. *Comment:* One commenter suggested that a State have the option of tailoring the provisions under the subheadings of "Limitations on Withholding" and "Priority of Withholding" portions in the "Instructions to Employer" section of Part A in the NMSN in accordance with its State law.

Response: The Consumer Credit Protection Act (CCPA) allows States to specify limits for amounts withheld which may be less than the maximum amounts allowed for by the CCPA. With respect to prioritization, we added space under the subheading "Priority of Withholding" in the "Instructions to Employer" section of Part A in the NMSN. The additional space is intended for States to provide information on how they prioritize between cash and medical support.

26. *Comment:* One commenter suggested changing the subtitle "Duration of Withholding" in the "Instruction to Employer" section of Part A to that of "Duration of Enrollment."

Response: We believe that the subtitle "Duration of Withholding" should not be changed. The section "Duration of Withholding," in the "Instruction to Employer" addresses withholding in the context of withholding employee contributions, rather than coverage or enrollment. Since the employer is responsible for withholding employee contributions for health plan premium payments, we believe it is important to list the circumstances that would allow the employer to discontinue withholding. They are as follows: the court or administrative child support order noted in the NMSN is no longer in effect, or the child(ren) is or will be enrolled in comparable coverage effective upon disenrollment, or the employer eliminates family health coverage for all of its employees.

27. *Comment:* One commenter suggested revising the language under the subsection of "Notice of Termination of Employment," in the "Instructions to Employer" section of Part A to eliminate unnecessary words. The language in the proposed rule read as follows: "In any case in which the above employee's employment with the above employer terminates, the employer must promptly notify the Issuing Agency listed above of such termination. This requirement may be satisfied by sending to the Issuing Agency named above a copy of any notice the employer is required to provide under the continuation coverage provisions of ERISA or the Health Insurance Portability and Accountability Act."

The commenter suggested the following revised language, "In any case in which the employee's employment terminates, the employer must promptly notify the Issuing Agency listed above of such termination. This requirement may be satisfied by sending the Issuing Agency a copy of any notice the employer is required to provide under the continuation coverage provisions of ERISA or the Health Insurance Portability and Accountability Act."

Response: We agree and incorporated the revised language accordingly.

28. *Comment:* One commenter recommended changing the heading of "Notice of Termination of Employment" to "Notice of Termination of Employment or Disenrollment of Children." The commenter further recommended that the employer be required to notify the State if the

children are disenrolled for any reason other than termination or amendment of the NMSN by the IV–D agency.

Response: This recommendation would impose an additional reporting requirement on the employer. The plan administrator is responsible for notifying all parties concerned, including the IV–D agency, whether the NMSN is a qualified medical child support order and whether enrollment of the child(ren) occurs, or if the NMSN does not meet the criteria and enrollment does not occur.

29. *Comment:* Three commenters recommended that a sentence be added under the subheading of "Employee Liability for Contribution to Plan" in the "Instruction to Employer" section of Part A of the NMSN indicating that in an event the employee contests withholding of the employee's contribution required by the health plan, the employee should contact the IV–D agency at the address listed on the NMSN.

Response: We agree. We added the following sentence under this heading, "To contest the withholding under this Notice, the employee should contact the Issuing Agency at the address and telephone number listed on the Notice."

30. *Comment:* A commenter requested clarification regarding how an employee could challenge certain aspects of the Notice qualification process.

Response: Although the issue of the Notice qualification process is more appropriately addressed in DOL's regulation, we concur with the commenter that clarification is needed in Part A. We added the following language under the "Instructions to Employer", subheading "Employee Liability for Contribution to Plan': "With respect to ERISA covered group health plans, it is the view of the Department of Labor that Federal courts have jurisdiction if the employee challenges a determination that the Notice constitutes a Qualified Medical Child Support Order."

31. *Comment:* One commenter recommended that the NMSN be made available for universal use in all child support cases and not limited to cases under the title IV–D program. Another commenter recommended that the NMSN should only be used by State IV–D agencies.

Response: The statute at section 466(a)(19)(A) requires the use of the NMSN where appropriate in title IV–D cases.

32. *Comment:* One commenter inquired whether the Case Number and Support Order Number requested in both Parts A and B of the NMSN are the same.

Response: They are not the same. The case number identifies the number of the case in the IV–D agency's caseload. The support order number pertains to the judicial or administrative support order that exists with respect to the individuals associated with the IV–D case.

33. *Comment:* Several commenters objected to the provision in Part B of the NMSN in the "Plan Administrator Response," section, (item 2.b.) that requires the IV–D agency to make a selection from an array of multiple options available under the health plan or plans. These commenters expressed concerns that there may be inadequate staff to make the selection, that such interaction may cause delays in enrollment, and that such interaction may hinder automation of the child support enforcement system. Another commenter supported the provision that the plan administrator should notify the IV–D agency that a choice among more than one option is required. The commenter also suggested that if the IV–D agency does not respond within twenty business days after the plan administrator has returned the Plan Administrator Response informing the IV–D agency that a choice is required, and the plan has default option, the plan administrator should enroll the child(ren), and the participant if necessary, in the plan's default option.

Response: We believe that decisions regarding selection of coverage are very important. If the plan administrator notifies the IV–D Agency that the participant is not enrolled in the plan and that more than one coverage option is available, the decision as to which option should be selected rests with the IV–D agency, in consultation with the custodial parent. The IV–D agency has this responsibility on the basis that the IV–D agency initiated the enrollment process, is providing services to the custodial parent and child, and is in the best position to make such a selection, in consultation with the custodial parent. If the IV–D agency does not make this selection and reply to the plan administrator within twenty business days, and the plan has a default option, the plan administrator should enroll the child(ren) in the default option. If the plan does not have a default option, the plan administrator may wish to contact the IV–D agency to ensure that each child is placed in appropriate coverage as soon as reasonably possible.

We have added paragraph (c)(8) to this final regulation at 45 CFR 303.32 to clarify the IV–D agency's responsibility if it receives a plan administrator response form indicating a choice of options is necessary before enrollment may proceed.

Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this final rule is consistent with these priorities and principles. This regulation has been determined to be significant and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (Public Law 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small entities. The Secretary certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities because the primary impact of these regulations is on State governments. These regulations place requirements on IV–D agencies for the use of the NMSN. The NMSN itself will help small employers and small plan administrators who are required under State laws to comply with orders to enroll children in health care plans available to their employees.

Paperwork Reduction Act of 1995

Section 303.32(c)(1) contains an information collection requirement. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Administration for Children and Families has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

- *Title:* National Medical Support Notice.
- *Summary:* The information collected by State title IV–D agencies will be used to complete the National Medical Support Notice (NMSN) which will be sent to employers of employee/obligors and used as a means of enforcing the health care coverage provision in a child support order. Primarily, the information State agencies will use to complete the NMSN will be the information regarding appropriate persons which is necessary for the enrollment of the child in employer related health care coverage, such as the employee (name, SSN, mailing address); employer's name/address; the name/address of the child(ren); and the custodial parent's name and address. The employer forwards the second part of the NMSN to the group health plan administrator which contains the same individual identifying information. The plan

administrator requires this information to determine whether to enroll the child(ren)in the group health plan. If necessary, the employer would also initiate wage withholding from the employee's wages for the purpose of paying premiums to the group health plan for enrollment of the child.

• *Description of the likely respondents:* State and local title IV–D agencies initiate the process of enforcing medical health care coverage for the child by completing and sending the NMSN to known employers of the noncustodial parents (employee/obligors). Employers and plan administrators are on the receiving end of the NMSN.

Information collection	[1]
Number of respondents	54
Responses per respondent	13,454
Average burden hours per response	1666
Total annual burden hours	123,507

[1] 45 CFR 303.32

The Office of Management and Budget (OMB) filed comments on this request for approval due to comments from one State. The State's first comment pertained to changing the timeframes that the employer and plan administrator have for processing the NMSN. The State wanted to change the timeframe that the employer has to forward the NMSN to the plan administrator from twenty business days from the date of the NMSN, to ten business days. The State also wanted to change the timeframe that the plan administrator has to enroll or deny enrollment from forty business days from the date of the NMSN, to twenty business days.

With respect to the twenty business days timeframe for employers, we are bound by the statute at section 466(a)(19)(B)(ii) of the Social Security Act that specifies this timeframe for employers. With respect to the forty business days timeframe for plan administrators, we are bound by the statute at section 609(a)(5)(C)(ii) of the Employment Retirement Income Security Act of 1974 (ERISA) that specifies this timeframe for plan administrators. We have no authority to change statutorily required timeframes.

As part of its second comment, the State indicated that it believes the NMSN is fine for ERISA employers but may be rejected by non-ERISA employers. Therefore the State recommended that the instructions and response sections in the NMSN should be modified and changed.

Historically, the IV–D program experienced difficulties in enforcing medical support coverage of children in ERISA covered health plans. ERISA preempts State law, under whose authority child support orders are established, and provides a basis for denying enrollment of children under the IV–D program in ERISA covered health plans. A primary objective of the NMSN is to meet the ERISA requirements for a qualified medical child support order to effect enrollment. The impediments to enrollment were in the ERISA covered health plans and not with the non-ERISA plans. The NMSN has been developed to apply to employer-related health plans. We have no reason to make any modifications to the NMSN as we are in agreement with the State that the NMSN will facilitate enrollment in ERISA covered health plans. We do not agree that there will be problems with non-ERISA plans.

The information collection requirements were approved by OMB under OMB number 0970–0222.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

We have determined that the rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small governments.

Executive Order 13132

Executive Order 13132 on Federalism applies to policies that have federalism implications, defined as "regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, or on the distributions of power and responsibilities among the various levels of government." While this rule does not have federalism implications for State or local governments as defined in the Executive Order, there were extensive consultations with State members of the Medical Child Support Work Group, as well as other State and local child support practitioners, on the content of the Notice and its requirements.

Congressional Review

This rule is not a major rule as defined in 5 U.S.C., Chapter 8.

List of Subjects in 45 CFR Part 303

Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No 93.563, Child Support Enforcement Program.)

Dated: August 18, 2000.

Olivia A. Golden,

Assistant Secretary, Administration for Children and Families.

Approved: August 29, 2000.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons discussed above, we are amending 45 CFR Chapter III as follows:

PART 303—STANDARDS FOR PROGRAM OPERATIONS

1. The authority citation of Part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396(d)(2), 1396b(o), 1396b(p) and 1396(k).

2. A new 303.32 is added to read as follows:

§ 303.32 National Medical Support Notice.

(a) *Mandatory State laws.* States must have laws, in accordance with section 466(a)(19) of the Act, requiring procedures specified under paragraph (c) of this section for the use, where appropriate, of the National Medical Support Notice (NMSN), to enforce the provision of health care coverage for children of noncustodial parents who are required to provide health care coverage through an employment-related group health plan pursuant to a child support order and for whom the employer is known to the State agency.

(b) *Exception.* States are not required to use the NMSN in cases with court or administrative orders that stipulate alternative health care coverage to employer-based coverage.

(c) *Mandatory procedures.* The State must have in effect and use procedures under which:

(1) The State agency must use the NMSN to transfer notice of the provision for health care coverage of the child(ren) to employers.

(2) The State agency must transfer the NMSN to the employer within two business days after the date of entry of an employee who is an obligor in a IV–D case in the State Directory of New Hires.

(3) Employers must transfer the NMSN to the appropriate group health plan providing any such health care coverage for which the child(ren) is eligible (excluding the severable Notice to Withhold for Health Care Coverage directing the employer to withhold any mandatory employee contributions to the plan) within twenty business days after the date of the NMSN.

(4) Employers must withhold any obligation of the employee for employee contributions necessary for coverage of the child(ren) and send any amount withheld directly to the plan.

(5) Employees may contest the withholding based on a mistake of fact. If the employee contests such withholding, the employer must initiate withholding until such time as the employer receives notice that the contest is resolved.

(6) Employers must notify the State agency promptly whenever the noncustodial parent's employment is terminated in the same manner as required for income withholding cases in accordance with § 303.100(e)(1)(x) of this part.

(7) The State agency must promptly notify the employer when there is no longer a current order for medical support in effect for which the IV–D agency is responsible.

(8) The State agency, in consultation with the custodial parent, must promptly select from available plan options when the plan administrator reports that there is more than one option available under the plan.

(d) *Effective date.* This section is effective October 1, 2001, or, if later, the effective date of State laws described in paragraph (a) of this section. Such State laws must be effective no later than the close of the first day of the first calendar quarter that begins after the close of the first regular session of the State legislature that begins after October 1, 2001. For States with 2-year legislative sessions, each year of such session would be regarded as a separate regular session.

Note: The following appendix will not appear in the Code of Federal Regulations.

BILLING CODE 4184–01–P

APPENDIX

NATIONAL MEDICAL SUPPORT NOTICE

PART A

NOTICE TO WITHHOLD FOR HEALTH CARE COVERAGE

This Notice is issued under section 466(a)(19) of the Social Security Act, section 609(a)(5)(C) of the Employee Retirement Income Security Act of 1974 (ERISA), and for State and local government and church plans, sections 401(e) and (f) of the Child Support Performance and Incentive Act of 1998.

Issuing Agency: _____ Issuing Agency Address: _____ _____ Date of Notice: _____ Case Number: _____ Telephone Number: _____ FAX Number: _____	Court or Administrative Authority: _____ Date of Support Order: _____ Support Order Number: _____

_____)
Employer/Withholder's Federal EIN Number

_____)
Employer/Withholder's Name

_____)
Employer/Withholder's Address

_____)
Custodial Parent's Name (Last, First, MI)

_____)
Custodial Parent's Mailing Address

_____)
Child(ren)'s Mailing Address (if different from Custodial Parent's)

_____)
_____)
_____)
Name, Mailing Address, and Telephone Number of a Representative of the Child(ren)

RE* _____
Employee's Name (Last, First, MI)

_____
Employee's Social Security Number

_____
Employee's Mailing Address

_____
Substituted Official/Agency Name and Address

Child(ren)'s Name(s) SSN	DOB	Child(ren)'s Name(s) SSN	DOB
_____	_____ _____	_____	_____ _____
_____	_____ _____	_____	_____ _____
_____	_____ _____	_____	_____ _____

The order requires the child(ren) to be enrolled in [ ] any health coverages available; or [] only the following coverage(s): __Medical; __Dental; __Vision; __Prescription drug; __Mental health; __Other (specify):_____

EMPLOYER RESPONSE

If either 1, 2, or 3 below applies, check the appropriate box and return this Part A to the Issuing Agency within 20 business days after the date of the Notice, or sooner if reasonable. NO OTHER ACTION IS NECESSARY. If neither 1, 2, nor 3 applies, forward Part B to the appropriate plan administrator(s) within 20 business days after the date of the Notice, or sooner if reasonable. Check number 4 and return this Part A to the Issuing Agency if the Plan Administrator informs you that the child(ren) is/are enrolled in an option under the plan for which you have determined that the employee contribution exceeds the amount that may be withheld from the employee's income due to State or Federal withholding limitations and/or prioritization.

□ 1. Employer does not maintain or contribute to plans providing dependent or family health care coverage.

□ 2. The employee is among a class of employees (for example, part-time or non-union) that are not eligible for family health coverage under any group health plan maintained by the employer or to which the employer contributes.

□ 3. Health care coverage is not available because employee is no longer employed by the employer:

Date of termination: _____

Last known address: _____

Last known telephone number: _____

New employer (if known): _____

New employer address: _____

New employer telephone number: _____

□ 4. State or Federal withholding limitations and/or prioritization prevent the withholding from the employee's income of the amount required to obtain coverage under the terms of the plan.

Employer Representative:

Name: _____ Telephone Number: _____

Title: _____ Date: _____

EIN (if not provided by Issuing Agency on Notice to Withhold for Health Care Coverage):_____

INSTRUCTIONS TO EMPLOYER

This document serves as notice that the employee identified on this National Medical Support Notice is obligated by a court or administrative child support order to provide health care coverage for the child(ren) identified on this Notice. This National Medical Support Notice replaces any Medical Support Notice that the Issuing Agency has previously served on you with respect to the employee and the children listed on this Notice.

The document consists of **Part A - Notice to Withhold for Health Care Coverage** for the employer to withhold any employee contributions required by the group health plan(s) in which the child(ren) is/are enrolled; and **Part B - Medical Support Notice to the Plan Administrator**, which must be forwarded to the administrator of each group health plan identified by the employer to enroll the eligible child(ren).

EMPLOYER RESPONSIBILITIES

1. If the individual named above is not your employee, or if family health care coverage is not available, please complete item 1, 2, or 3 of the Employer Response as appropriate, and return it to the Issuing Agency. NO FURTHER ACTION IS NECESSARY.

2. If family health care coverage is available for which the child(ren) identified above may be eligible, you are required to:

   a. Transfer, not later than 20 business days after the date of this Notice, a copy of **Part B - Medical Support Notice to the Plan Administrator** to the administrator of each appropriate group health plan for which the child(ren) may be eligible, and

   b. Upon notification from the plan administrator(s) that the child(ren) is/are enrolled, either

      1) withhold from the employee's income any employee contributions required under each group health plan, in accordance with the applicable law of the employee's principal place of employment and transfer employee contributions to the appropriate plan(s), or

      2) complete item 4 of the Employer Response to notify the Issuing Agency that enrollment cannot be completed because of prioritization or limitations on withholding.

   c. If the plan administrator notifies you that the employee is subject to a waiting period that expires more than 90 days from the date of its receipt of **Part B of** this Notice, or whose duration is determined by a measure other than the passage of time (for example, the completion of a certain number of hours worked), notify the plan administrator when the employee is eligible to enroll in the plan and that this

Notice requires the enrollment of the child(ren) named in the Notice in the plan.

LIMITATIONS ON WITHHOLDING

The total amount withheld for both cash and medical support cannot exceed ___% of the employee's aggregate disposable weekly earnings. The employer may not withhold more under this National Medical Support Notice than the lesser of:

1. The amounts allowed by the Federal Consumer Credit Protection Act (15 U.S.C., section 1673(b)):

2. The amounts allowed by the State of the employee's principal place of employment: or

3. The amounts allowed for health insurance premiums by the child support order, as indicated here:_____.

The Federal limit applies to the aggregate disposable weekly earnings (ADWE). ADWE is the net income left after making mandatory deductions such as State, Federal, local taxes; Social Security taxes: and Medicare taxes.

PRIORITY OF WITHHOLDING

If withholding is required for employee contributions to one or more plans under this notice and for a support obligation under a separate notice and available funds are insufficient for withholding for both cash and medical support contributions, the employer must withhold amounts for purposes of cash support and medical support contributions in accordance with the law, if any, of the State of the employee's principal place of employment requiring prioritization between cash and medical support, as described here:_____
_____.

DURATION OF WITHHOLDING

The child(ren) shall be treated as dependents under the terms of the plan. Coverage of a child as a dependent will end when similarly situated dependents are no longer eligible for coverage under the terms of the plan. However, the continuation coverage provisions of ERISA may entitle the child to continuation coverage under the plan. The employer must continue to withhold employee contributions and may not disenroll (or eliminate coverage for) the child(ren) unless:

1. The employer is provided satisfactory written evidence that:

   a. The court or administrative child support order referred to above is no longer in effect: or
   b. The child(ren) is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment from the plan: or

2. The employer eliminates family health coverage for all of its employees.

POSSIBLE SANCTIONS

An employer may be subject to sanctions or penalties imposed under State law and/or ERISA for discharging an employee from employment, refusing to employ, or taking disciplinary action against any employee because of medical child support withholding, or for failing to withhold income, or transmit such withheld amounts to the applicable plan(s) as the Notice directs.

NOTICE OF TERMINATION OF EMPLOYMENT

In any case in which the above employee's employment terminates, the employer must promptly notify the Issuing Agency listed above of such termination. This requirement may be satisfied by sending to the Issuing Agency a copy of any notice the employer is required to provide under the continuation coverage provisions of ERISA or the Health Insurance Portability and Accountability Act.

EMPLOYEE LIABILITY FOR CONTRIBUTION TO PLAN

The employee is liable for any employee contributions that are required under the plan(s) for enrollment of the child(ren) and is subject to appropriate enforcement. The employee may contest the withholding under this Notice based on a mistake of fact (such as the identity of the obligor). Should an employee contest the withholding under this Notice, the employer must proceed to comply with the employer responsibilities in this Notice until notified by the Issuing Agency to discontinue withholding. To contest the withholding under this Notice, the employee should contact the Issuing Agency at the address and telephone number listed on the Notice. With respect to plans subject to ERISA, it is the view of the Department of Labor that Federal Courts have jurisdiction if the employee challenges a determination that the Notice constitutes a Qualified Medical Child Support Order.

CONTACT FOR QUESTIONS

If you have any questions regarding this Notice, you may contact the Issuing Agency at the address and telephone number listed above.

NATIONAL MEDICAL SUPPORT NOTICE OMB NO. 1210-0113

PART B
MEDICAL SUPPORT NOTICE TO PLAN ADMINISTRATOR

This Notice is issued under section 466(a)(19) of the Social Security Act, section 609(a)(5)(C) of the Employee Retirement Income Security Act of 1974, and for State and local government and church plans, sections 401(e) and (f) of the Child Support Performance and Incentive Act of 1998. Receipt of this Notice from the Issuing Agency constitutes receipt of a Medical Child Support Order under applicable law. The rights of the parties and the duties of the plan administrator under this Notice are in addition to the existing rights and duties established under such law.

Issuing Agency: _____ Issuing Agency Address: _____ _____ Date of Notice: _____ Case Number: _____ Telephone Number: _____ FAX Number: _____	Court or Administrative Authority: _____ Date of Support Order: _____ Support Order Number: _____

_____)
Employer/Withholder's Federal EIN Number

_____)
Employer/Withholder's Name

_____)
Employer/Withholder's Address

_____)
Custodial Parent's Name (Last, First, MI)

_____)
Custodial Parent's Mailing Address

_____)
Child(ren)'s Mailing Address (if Different from Custodial Parent's)

_____)
_____)
_____)
Name(s), Mailing Address, and Telephone Number of a Representative of the Child(ren)

RE* _____
Employee's Name (Last, First, MI)

_____
Employee's Social Security Number

_____
Employee's Address

_____
Substituted Official/Agency Name and Address

Child(ren)'s Name(s)	DOB	SSN	Child(ren)'s Name(s)	DOB	SSN
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

The order requires the child(ren) to be enrolled in [] any health coverages available; or [] only the following coverage(s): __medical; __dental: __vision: __prescription drug; __mental health; __other (specify):_____

PLAN ADMINISTRATOR RESPONSE

(To be completed and returned to the Issuing Agency within 40 business days after the date of the Notice, or sooner if reasonable)

This Notice was received by the plan administrator on _____.

□ 1. This Notice was determined to be a "qualified medical child support order," on _____. Complete **Response 2 or 3, and 4,** if applicable.

2. The participant (employee) and alternate recipient(s) (child(ren)) are to be enrolled in the following family coverage.

□ a. The child(ren) is/are currently enrolled in the plan as a dependent of the participant.

□ b. There is only one type of coverage provided under the plan. The child(ren) is/are included as dependents of the participant under the plan.

□ c. The participant is enrolled in an option that is providing dependent coverage and the child(ren) will be enrolled in the same option.

□ d. The participant is enrolled in an option that permits dependent coverage that has not been elected; dependent coverage will be provided.

Coverage is effective as of __/__/____(includes waiting period of less than 90 days from date of receipt of this Notice). The child(ren) has/have been enrolled in the following option: _____. Any necessary withholding should commence if the employer determines that it is permitted under State and Federal withholding and/or prioritization limitations.

□ 3. There is more than one option available under the plan and the participant is not enrolled. The Issuing Agency must select from the available options. Each child is to be included as a dependent under one of the available options that provide family coverage. If the Issuing Agency does not reply within 20 business days of the date this Response is returned, the child(ren), and the participant if necessary, will be enrolled in the plan's default option, if any: _____.

□ 4. The participant is subject to a waiting period that expires __/__/____ (more than 90 days from the date of receipt of this Notice), or has not completed a waiting period which is determined by some measure other than the passage of time, such as the completion of a certain number of hours worked (describe here: _____). At the completion of the waiting period, the plan administrator will process the enrollment.

□ 5. This Notice does not constitute a "qualified medical child support order" because:

□ The name of the □ child(ren) or □ participant is unavailable.

□ The mailing address of the □ child(ren) (or a substituted official) or □ participant is unavailable.

□ The following child(ren) is/are at or above the age at which dependents are no longer eligible for coverage under the plan _____ (insert name(s) of child(ren)).

Plan Administrator or Representative:

Name: _____ Telephone Number: _____

Title: _____ Date: _____

Address:_____

INSTRUCTIONS TO PLAN ADMINISTRATOR

This Notice has been forwarded from the employer identified above to you as the plan administrator of a group health plan maintained by the employer (or a group health plan to which the employer contributes) and in which the noncustodial parent/participant identified above is enrolled or is eligible for enrollment.

This Notice serves to inform you that the noncustodial parent/participant is obligated by an order issued by the court or agency identified above to provide health care coverage for the child(ren) under the group health plan(s) as described on **Part B**.

(A) If the participant and child(ren) and their mailing addresses (or that of a Substituted Official or Agency) are identified above, and if coverage for the child(ren) is or will become available, this Notice constitutes a "qualified medical child support order"(QMCSO) under ERISA or CSPIA, as applicable. (If any mailing address is not present, but it is reasonably accessible, this Notice will not fail to be a QMCSO on that basis.) You must, within 40 business days of the date of this Notice, or sooner if reasonable:

(1) Complete Part B - Plan Administrator Response - and send it to the Issuing Agency:

(a) if you checked Response 2:

(i) notify the noncustodial parent/participant named above, each named child, and the custodial parent that coverage of the child(ren) is or will become available (notification of the custodial parent will be deemed notification of the child(ren) if they reside at the same address);

(ii) furnish the custodial parent a description of the coverage available and the effective date of the coverage, including, if not already provided, a summary plan description and any forms, documents, or information necessary to effectuate such coverage, as well as information necessary to submit claims for benefits;

(b) if you checked Response 3:

(i) if you have not already done so, provide to the Issuing Agency copies of applicable summary plan descriptions or other documents that describe available coverage including the additional participant contribution necessary to obtain coverage for the child(ren) under each option and whether there is a limited service area for any option;

(ii) if the plan has a default option, you are to enroll the child(ren) in the default option if you have not received an election from the Issuing Agency within 20 business days of the date you returned the Response. If the plan does not have a default option, you are to enroll the child(ren) in the option selected by the Issuing Agency.

(c) if the participant is subject to a waiting period that expires more than 90 days from the

date of receipt of this Notice, or has not completed a waiting period whose duration is determined by a measure other than the passage of time (for example, the completion of a certain number of hours worked), complete Response 4 on the Plan Administrator Response and return to the employer and the Issuing Agency, and notify the participant and the custodial parent; and upon satisfaction of the period or requirement, complete enrollment under Response 2 or 3, and

(d) upon completion of the enrollment, transfer the applicable information on Part B - Plan Administrator Response to the employer for a determination that the necessary employee contributions are available. Inform the employer that the enrollment is pursuant to a National Medical Support Notice.

(B) If within 40 business days of the date of this Notice, or sooner if reasonable, you determine that this Notice does not constitute a QMCSO, you must complete Response 5 of Part B - Plan Administrator Response and send it to the Issuing Agency, and inform the noncustodial parent/participant, custodial parent, and child(ren) of the specific reasons for your determination.

(C) Any required notification of the custodial parent, child(ren) and/or participant that is required may be satisfied by sending the party a copy of the Plan Administrator Response, if appropriate.

UNLAWFUL REFUSAL TO ENROLL

Enrollment of a child may not be denied on the ground that: (1) the child was born out of wedlock; (2) the child is not claimed as a dependent on the participant's Federal income tax return; (3) the child does not reside with the participant or in the plan's service area; or (4) because the child is receiving benefits or is eligible to receive benefits under the State Medicaid plan. If the plan requires that the participant be enrolled in order for the child(ren) to be enrolled, and the participant is not currently enrolled, you must enroll both the participant and the child(ren). All enrollments are to be made without regard to open season restrictions.

PAYMENT OF CLAIMS

A child covered by a QMCSO, or the child's custodial parent, legal guardian, or the provider of services to the child, or a State agency to the extent assigned the child's rights, may file claims and the plan shall make payment for covered benefits or reimbursement directly to such party.

PERIOD OF COVERAGE

The alternate recipient(s) shall be treated as dependents under the terms of the plan. Coverage of an alternate recipient as a dependent will end when similarly situated dependents are no longer eligible for coverage under the terms of the plan. However, the continuation coverage provisions of ERISA or other applicable law may entitle the alternate recipient to continue coverage under the plan. Once a child is enrolled in the plan as directed above, the alternate recipient may not be disenrolled unless:

(1) The plan administrator is provided satisfactory written evidence that either:

(a) the court or administrative child support order referred to above is no longer in effect, or

(b) the alternate recipient is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment from the plan;

(2) The employer eliminates family health coverage for all of its employees; or

(3) Any available continuation coverage is not elected, or the period of such coverage expires.

CONTACT FOR QUESTIONS

If you have any questions regarding this Notice, you may contact the Issuing Agency at the address and telephone number listed above.

Paperwork Reduction Act Notice

The Issuing Agency asks for the information on this form to carry out the law as specified in the Employee Retirement Income Security Act or the Child Support Performance and Incentive Act, as applicable. You are required to give the Issuing Agency the information. You are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Issuing Agency needs the information to determine whether health care coverage is provided in accordance with the underlying child support order. The Average time needed to complete and file the form is estimated below. These times will vary depending on the individual circumstances.

	Learning about the law or the form	Preparing the form
First Notice	1 hr.	1 hr., 45 min.
Subsequent Notices	-----	35 min.

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Federal Register

Wednesday,
December 27, 2000

Part V

Department of Health and Human Services

Administration for Children and Families

45 CFR Parts 302, 304, and 305
Child Support Enforcement Program; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 302, 304 and 305

RIN 0970–AB85

Child Support Enforcement Program; Incentive Payments, Audit Penalties

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Final rule.

SUMMARY: This final rule implements the statutory requirement of the Social Security Act that requires the Secretary of Health and Human Services to establish the new performance-based incentive system. It also implements a performance-based penalty system and establishes standards for certain types of audits. Finally, this rule includes a requirement that States establish an administrative review process. The incentive system will be used to reward States for their performance in running a Child Support Enforcement (IV–D) Program. The penalty system will be used to penalize States that fail to perform at acceptable levels or fail to submit complete and reliable data.

EFFECTIVE DATE: The final rule is effective: December 27, 2000. Section 304.12 is effective through September 30, 2001.

FOR FURTHER INFORMATION CONTACT: Joyce Pitts, OCSE Division of Policy and Planning, (202) 401–5374. Hearing impaired individuals may call the Federal Dual Party Relay Service at 800–877–8339 between 8:00 a.m. and 7:00 p.m. eastern time.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Authority

These regulations implement sections 409(a)(8), 452(a)(4) and (g), and 458A of the Social Security Act (Act), as added by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, (PRWORA), by the Child Support Performance and Incentive Act of 1998, Pub. L. 105–200, and as amended by the Balanced Budget Act of 1997, Pub. L. 105–33 and the Consolidated Appropriations Act of FY 2000, Pub. L. 106–113.

These regulations are also issued under the authority granted to the Secretary of Health and Human Services (the Secretary) by section 1102 of the Act, 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which the Secretary is responsible under the Act.

II. Background

A. The National Strategic Plan

The Government Performance and Results Act of 1993 required Federal programs to set goals and measure results by establishing strategic plans. OCSE and State partners developed a National Child Support Enforcement Strategic Plan by consensus with a vision, mission, goals and objectives. The plan includes three major goals for the child support program—that all children have paternity established, all children in the program have financial and medical support orders established, and all children in the program receive financial and medical support from both parents.

After development of the National Child Support Enforcement Strategic Plan, States and OCSE worked together to develop specific performance indicators that could be used to measure the program's success in achieving the goals and objectives. It was this Strategic Plan and its performance measures that the States and OCSE used to recommend a performance-based incentive funding system to reward States for results. The Plan's array of performance measures was reviewed and the key indicators for the major activities of the child support enforcement program were selected. The Strategic Plan measures and the incentive measures for paternity establishment, support order establishment, collections on current support and cost-effectiveness are the same. The only deviation from the plan was the measure for collections on past-due support. State and Federal partners rejected the Strategic Plan measure that would provide an arrearage collection rate because there is a wide variation in how States' laws affect arrearages. State and Federal partners concluded that the only workable measure that would level the playing field among States in this important area was one based on the number of cases that were paying on arrears.

After the incentive funding proposals were developed, State and Federal partners further collaborated to recommend a system of performance penalties for States. They returned to the Strategic Plan and the recommended incentive funding system that was being considered for legislation. The partners focused on those key measures of the program's performance which had been recommended for incentives and chose a subset of the incentive measures for application of financial penalties. These were the incentive measures which were given a greater weight in the computation of the incentive formula—paternity establishment, order establishment and the collection of current support.

The Strategic Plan was also the basis for shaping a revision of the child support data reporting and collection systems and the role of the Federal audit process. This implements key structures that have been shaped and guided by the Strategic Plan and these structures will, in turn, help achieve outcomes that fulfill the goals and objectives of the Plan itself.

B. Issues and Activities Leading to the New Incentive Provisions

Under section 458 of title IV–D of the Act, States are paid a minimum of six percent of their collections in TANF cases and six percent of their non-TANF collections as an incentive. Under this system, there is also the potential to earn up to 10 percent of collections based on the State's cost-effectiveness in running a child support program. However, the amount of non-TANF incentives is capped at 115 percent of the TANF incentive earned.

This incentive system has been questioned for focusing on only one aspect of the IV–D program—Cost-effectiveness. In addition, since all States receive the minimum incentive amount of six percent of collections regardless of performance, this system was not regarded as having a real incentive effect.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) required the Secretary, in consultation with State IV–D Program Directors, to recommend to Congress a new incentive funding system for State IV–D programs based on program performance. The Incentive Funding Workgroup recommended a new incentive funding system based on the foundation of the National Strategic Plan.

The Secretary fully endorsed the incentive formula recommendations and made recommendations to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. Most of the recommendations were included in Pub. L. 105–200, the Child Support Performance and Incentive Act of 1998. This rule implements that legislation. The legislative language is very explicit. Therefore, we are for the most part adopting the statutory language in this rule.

C. Audit and Penalties

Prior to enactment of PRWORA, the Federal statute at former section 452(a)(4) of the Act required periodic, comprehensive Federal audits of State IV–D programs to ensure substantial compliance with all Federal IV–D requirements. If the audit found that the State program was not in substantial compliance and if the deficiencies identified in an audit were not corrected, States faced a mandatory fiscal penalty of between 1 and 5 percent of the Federal share of the State's title IV–A program funding under section 403(h) of the Act. Once an audit determined compliance with identified deficiencies, the penalty was lifted or ceased.

Such a detailed, process-oriented audit was time-consuming and labor-intensive for both Federal auditors and the States. In addition, audit findings did not measure current State performance or current program requirements because of delays and the time it took to conduct audits. States contended that the audits focused too much on administrative procedures and processes rather than performance outcome and results.

Section 452(a)(4) of the Act, as amended by PRWORA, changed the Federal audit process to focus on measuring performance and program results, instead of process. Subsequently, as part of technical amendments to PRWORA, the penalty provision under section 409(a)(8) of the Act was modified to conform to the new audit approach under the IV–D program. The new approach to measuring program results changes the Federal audit focus to determining the reliability of program data used to measure performance and requires States to conduct self-reviews, similar to the former Federal process audits, to assess whether or not all required IV–D services are being provided. In addition, Federal auditors will conduct periodic financial and other audits, as necessary.

The penalty system in this rule replaces the previous penalty under former section 403(h) of the Act that focused on substantial compliance with prescriptive Federal IV–D requirements. However, section 452(a)(4)(C)(iii) provides for audits for such other purposes as the Secretary may find necessary and section 409(a)(8) provides for a penalty "on the basis of the results of an audit. * * *"

The assessment of data reliability by Federal auditors is a critical aspect of assuring that both incentives and penalties are based on accurate and reliable State-reported data. State-reported statistical and financial data taken from reporting forms, the OCSE–157, the OCSE–34A, and the OCSE–396A, will be audited for completeness and reliability and will be used in determining State performance levels. State-reported data that is determined to be incomplete or unreliable may cause reductions in the State's funding under the IV–A (Temporary Assistance for Needy Families) program and will result in loss of Federal incentive payments under the IV–D program.

While the specifics of performance measures for penalty purposes, with the exception of the Paternity Establishment Percentage (PEP) under section 452(g) of the Act, are left to the discretion of the Secretary, the approach to assessing penalties in this regulation takes into consideration the results of work done by State and Federal partners during the development of the National Strategic Plan and the proposal for incentive measures, as well as consultations with a wide variety of other interested parties.

III. Description of Regulatory Provisions—Incentives and Administrative Review

This final rule does not have many changes from the notice of proposed rule making published in the **Federal Register** on October 8, 1999 (64 FR 55073). However, we considered each comment and made some changes. The administrative complaint procedure was revised and clarified; a standard was added to the definition of data reliability; a deadline was established for having final incentive data to OCSE; and the incentive and reinvestment base-year calculation examples were removed.

Parts 302, 303 and 304—State Plan Requirements, Standards for Program Operations, and Federal Financial Participation

The cross-references to existing regulations mentioned in this Description of Regulatory Provisions are as amended by the Interim Final Conforming Rule (64 FR 6237) published in the **Federal Register** February 9, 1999.

Sections302.55 and 304.12—Regulations for Existing Incentives Process.

Currently, under section 454(22) of the Act and 45 CFR 302.55, the only restriction on the use of incentive funds awarded to the State is that States must share incentives earned with any political subdivision that shares in funding the administrative cost of the program. The requirement to share funds with political subdivisions is not being changed. Therefore, we are adding reference to the new part 305 in § 302.55 by adding the words "and part 305" after "§ 304.12".

Current 45 CFR 304.12(b)(1), as revised on February 9, 1999 at 64 FR 6237, based on section 458 of the Act, computes incentive payments for States for a fiscal year as a percentage of the State's TANF collections, and a percentage of its non-TANF collections. The percentages are determined separately for TANF and non-TANF portions of the incentive. The percentages are based on the ratio of the State's TANF collections to the State's total administrative costs and the State's non-TANF collections to the State's total administrative costs. This is known as a State's cost-effectiveness ratio. The portion of the incentive payment paid to a State in recognition of its non-TANF collections is limited to 115 percent of the portion of the incentive payment paid in recognition of its TANF collections.

HHS estimates the total incentive payment that each State will receive for the upcoming fiscal year. Each State includes one-quarter of the estimated total payment in its quarterly collection report that will reduce the amount that would otherwise be paid to the Federal government. Following the end of the fiscal year, HHS calculates the actual incentive payment the State should have received. If adjustments to the estimated amount are necessary, an additional positive or negative title IV–D grant award is issued.

Under section 201(f) of the Child Support Performance and Incentive Act of 1998, effective October 1, 2001, current section 458 of the Act will be repealed and section 458A of the Act, will be redesignated as section 458. To implement this statutory provision, we added a new paragraph (d) to § 304.12 under which § 304.12 in its entirety becomes obsolete on October 1, 2001.

A new paragraph (e) is also added to reflect the phase-in of the new incentive system as prescribed under section 201(b) of the Child Support Performance and Incentive Act. In fiscal year 2000, the amount of incentives paid under § 304.12 will be reduced by one-third. In fiscal year 2001, the amount of incentives paid under § 304.12 will be reduced by two-thirds.

Section 303.35—Administrative complaint procedure

We have shifted to using an outcome-oriented approach to child support enforcement program accountability and responsibility. This approach, much of which was adopted under PRWORA,

seeks to balance the Federal government's oversight responsibility with States' responsibilities for child support service delivery and fiscal accountability. One element of the approach, adopted partially in PRWORA and being implemented by these final regulations, is the focus on results-oriented performance measures for incentives and penalties purposes. A second aspect of the approach replaces statutory and regulatory Federal audit requirements with States' responsibility for ensuring that their programs meet IV–D requirements. The requirement for periodic State self-reviews, intended for management purposes to identify and resolve deficiencies in case processing, was also adopted under PRWORA as a State plan requirement at section 454(15)(A) of the Act. Procedures for State self-reviews are being implemented under a separate rulemaking.

Although Federal funding of administrative review processes has long been considered an allowable expenditure under the IV–D program, we believe it to be a key element to any IV–D program. In the era of our focus on program results, we believe it appropriate to ensure that these administrative complaint processes are available to recipients of IV–D services. Using the authority under section 1102 of the Act to publish regulations that the Secretary deems necessary for the efficient administration of the IV–D program, we have added a section to part 303 requiring States to provide for an administrative review.

Under § 303.35, entitled Administrative Complaint Procedure, each State must have a procedure in place to allow individuals receiving IV–D services the opportunity to request a review of their cases when there is evidence that an action should have been taken on their cases. In addition, the State must have procedures in place, notify individuals of the procedures, and make them available to recipients of IV–D services to use when requesting a review, and use them for notifying recipients of the results of the review and any actions taken.

This final rule revises § 303.35 as it appeared in the notice of proposed rulemaking published in the **Federal Register** on October 8, 1999 (64 FR 55073). These changes were made to balance our concern for efficient IV–D service provision with our commitment to allowing States discretion and flexibility in program design. We believe that recipients of IV–D services, through administrative complaint procedures, should be able to lodge complaints when they have evidence to support specific concerns in their cases. However, we have revised the regulatory language to address concerns that the proposed language was overly broad and open to multiple interpretations. In addition, we have included language to require States to notify individuals of the availability of administrative complaint procedures.

Part 305—Program Performance Measures, Standards, Financial Incentives, and Penalties

We added a new part 305 to implement the new incentive system under section 458A of the Act and certain audit and penalty provisions found in sections 409(a)(8), 452(a)(4)(C) and 452(g) of the Act. Former part 305 was revoked on February 9, 1999 at 64 FR 6237.

Section 305.0 Scope.

Section 305.0, Scope, explains what part 305 covers, including the statutory basis for the incentive and penalty systems and a general description of the contents of part 305. Section 305.1 contains definitions and § 305.2 contains performance measures. Sections 305.31 through § 305.36 of part 305 describe the incentive system. Sections 305.40 through § 305.42 and §§ 305.60 through § 305.66 describe the grounds for penalties under section 409(a)(8) of the Act, the procedures for imposing penalties, the types of audits, and set forth the standards for substantial compliance audits and certain audit procedures.

Section 305.1 Definitions.

Under § 305.1, Definitions, the definitions found in § 301.1 of program regulations also apply to part 305. In addition, for purposes of part 305, § 305.1 defines the following terms:

Under paragraph (a), the term IV–D case means a parent (mother, father, or putative father) who is now or eventually may be obligated under law for the support of a child or children receiving services under the title IV–D program. A parent is a separate IV–D case for each family with a dependent child or children that the parent may be obligated to support. If both parents are absent and liable or potentially liable for support of a child or children receiving services under the IV–D program, each parent is considered a separate IV–D case. In counting cases for the purposes of this part, States may exclude cases closed under § 303.11 and cases over which the State has no jurisdiction. Lack of jurisdiction cases are those in which a non-custodial parent resides in the civil jurisdictional boundaries of another country or Federally recognized Indian Tribe and no income or assets of this individual are located or derived from outside that jurisdiction, and the State has no other means through which to enforce the order.

The definition of a IV–D case in § 305.1 implements the requirement in section 458A(e) that the Secretary include in regulations directions for excluding from the incentive calculations certain closed cases and cases over which the States do not have jurisdiction.

The definition itself is used in required Federal report forms and defines which cases may be excluded for purposes of calculating incentives, namely, IV–D cases meeting the conditions for case closure under § 303.11 and cases over which the State has no jurisdiction. This definition assures that workable cases are counted while those cases in which there is no possible action by the IV–D agency will be discounted. It is essential that we use consistent definitions for all data and therefore, the definitions in § 305.1 apply equally for incentives and penalties purposes.

Under paragraph (b), the term *Current Assistance collections* means collections received and distributed on behalf of individuals whose rights to support are required to be assigned to the State under title IV–A (TANF or Aid to Families with Dependent Children, AFDC), IV–E (Foster Care), or XIX (Medicaid) of the Act. In addition, a referral to the State's IV–D agency must have been made. Current Assistance collections do not include collections received and distributed under the Tribal TANF program because the statute includes only those collections where there is an assignment to the State. Tribal TANF recipients are not required by statute to assign their support rights. Thus, it is inappropriate to include collections relative to Tribal TANF programs in this definition.

Under paragraph (c), the term *Former Assistance collections* means collections received and distributed on behalf of individuals whose rights to support were formerly required to be assigned to the State under either title IV–A, title IV–E, or title XIX of the Act.

Under paragraph (d), the term *Never Assistance/Other collections* means all other collections received and distributed on behalf of individuals who are receiving child support enforcement services under title IV–D of the Act.

The definitions of various categories of collections above reflect categories of collections described in section 458A(b)(5)(C) of the Act and used to calculate the State's collections base used for computing incentives. Current

Assistance and Former Assistance collections are multiplied by 2 and added to Never Assistance/Other collections to determine the State's collections base.

Under paragraph (e), the term *total IV–D dollars expended* means total IV–D administrative expenditures claimed by a State in a specified fiscal year adjusted in accordance with § 305.32. Section 305.32, addressed later, includes specific expenditures that are excluded when calculating a State's total IV–D administrative expenditures for calculation of the cost-effectiveness performance measure.

The term *Consumer Price Index or CPI* in paragraph (f) is taken from the definition in section 458A(b)(2)(B) of the Act, and means the last Consumer Price Index for all-urban consumers published by the Department of Labor. The CPI for a fiscal year is the average of the Consumer Price Index for the 12-month period ending on September 30 of the fiscal year.

Under paragraph (g), the term *State incentive payment share* for a fiscal year means the incentive base amount for the State for the fiscal year divided by the sum of the incentive base amounts for all of the States for the fiscal year. This definition is found in section 458A(b)(3) of the Act.

Under paragraph (h), the term *State incentive base amount* for a fiscal year means the sum of the State's performance level percentages (determined in accordance with § 305.33) multiplied by the State's corresponding maximum incentive base amount for each of the following measures: (1) The paternity establishment performance level; (2) the support order performance level; (3) the current collections performance level; (4) the arrears collection performance level; and (5) the cost-effectiveness performance level. This definition is found in section 458A(b)(4) of the Act.

Under paragraph (i), the term *reliable data* means the most recent data available which are found by the Secretary to be reliable for purposes of computing the paternity establishment percentage. This definition is based on section 452(g)(2)(C) of the Act and includes further elaboration of the circumstances under which the Secretary will consider data to be reliable. In the final rule, we have added that data for computing each of the measures must be found to be sufficiently complete and error free to be convincing for their purpose and context. For purposes of incentives and penalties, data must meet a 95 percent standard of reliability beginning in fiscal year 2001. The 95 percent rate was selected based on generally accepted accounting principles used by the auditing community and our experience from data reliability audits conducted to date on State systems. This standard is consistent with the recognition that "data may contain errors as long as they are not of a magnitude that would cause a reasonable person, aware of the errors, to doubt a finding or conclusion made based on the data." Part of this definition is lifted verbatim from Chapter 1, Introduction of the U.S. General Accounting Office, Office of Policy Booklet (Standards) entitled, *Assessing the Reliability of Computer-Processed Data*, dated September 1990. The official designation of this booklet is GAO/OP–8.1.3. The Government Auditing Standards—generally referred to as the "Yellow Book"—provide the standards and requirements for financial and performance audits. A key standard covers the steps to be taken when relying on computer-based evidence. This booklet from the GAO, Office of Policy is intended to help auditors meet the Yellow Book standard for ensuring that computer-based data are reliable.

Under paragraph (j), the term *complete* means all reporting elements from OCSE reporting forms that are necessary to compute a State's performance levels, incentive base amount, and maximum incentive base amount have been provided within the timeframes established in instructions to these reporting forms and § 305.32(f).

We believe the definitions in (i) and (j) are appropriate for purposes of Part 305 since State IV–D programs are required to have comprehensive statewide automated systems in place by October 1, 2000 which, under section 454A(c) of the Act, must enable the Secretary to determine the incentive payments and penalty adjustments required by sections 452(g) and 458 of the Act. In addition, under section 454(15)(A), States must have a process of extracting from the automated data processing system and transmitting to the Secretary, data and calculations concerning the levels of accomplishment and rates of improvement with respect to the applicable performance indicators for purposes of sections 452(g) and 458 of the Act. Finally, Federal auditors are required under section 452(a)(4)(C)(i) of the Act to conduct audits to assess the completeness, reliability, and security of the data, and the accuracy of the reporting systems used in calculating performance indicators. These provisions, taken together, require a clear, accepted and supportable definition of reliable data.

Section 305.2 Performance measures

This section describes the performance measures that will be used in the incentive and penalty systems. Paragraph (a) of § 305.2, Performance measures, indicates the child support incentive system will measure State performance levels in five areas: (1) Paternity establishment; (2) child support order establishment (cases with orders); (3) collections on current support; (4) collections on arrears; and (5) cost-effectiveness. It also requires that the penalty system measure State performance in three of these areas: (1) Paternity establishment; (2) child support order establishment; and (3) collections on current support.

Paragraph (a)(1), *Paternity Establishment Performance Level,* reflects the explicit statutory language in section 458A(b)(6)(A)(i) of the Act, which gives States the choice of being evaluated on one of two measures—the IV–D or the statewide paternity establishment percentage (commonly known as the PEP), discussed in detail later. The statute and the paragraph provide that the count of children shall not include any child who is a dependent by reason of the death of a parent (unless paternity is established for that child). It also shall not include any child with respect to whom there is a finding of good cause for refusing to cooperate with the State agency in establishing paternity, or for whom the appropriate State agency determines it is against the best interest of the child to pursue paternity issues.

The IV–D paternity establishment percentage and statewide paternity establishment percentage definitions that follow are contained in paragraphs (a)(1)(i) and (ii) and are set forth in sections 452(g)(2)(A) and (B) of the Act:

IV–D Paternity Establishment Percentage means the ratio that the total number of children in the IV–D caseload in the fiscal year (or, at the option of the State, as of the end of the fiscal year) who have been born out-of-wedlock and for whom paternity has been established or acknowledged, bears to the total number of children in the IV–D caseload as of the end of the preceding fiscal year who were born out-of-wedlock. The equation to compute the measure is as follows (expressed as a percent):

$$\frac{\text{Total \# of Children in IV - D Caseload in the Fiscal Year or, at the option of the State, as of the end of the Fiscal Year who were Born Out - of - Wedlock with Paternity Established or Acknowledged}}{\text{Total \# of Children in IV - D Caseload as of the end of the preceding Fiscal Year who were Born Out - of - Wedlock}}$$

Statewide Paternity Establishment Percentage is the ratio that the total number of minor children who have been born out-of-wedlock and for whom paternity has been established or acknowledged during the fiscal year, bears to the total number of children born out-of-wedlock during the preceding fiscal year. The equation to compute the measure is as follows (expressed as a percent):

$$\frac{\text{Total \# Minor Children who have been Born Out - of - Wedlock and for Whom Paternity has been Established or Acknowledged During the Fiscal Year}}{\text{Total \# of Children Born Out of Wedlock During the Preceding Fiscal Year}}$$

The second performance measure contained in § 305.2(a)(2), Support Order Performance Level, requires a determination of whether or not there is a support order for each case. The equation to compute the measure is as follows (expressed as a percent):

$$\frac{\text{Number of IV - D Cases with Child Support Orders}}{\text{Total Number of IV - D Cases}}$$

While the performance measure is defined in section 458A(b)(6)(B)(i) of the Act, paragraph (a)(2) provides guidance as to which orders are counted for calculation of performance measures.

The performance measure in paragraph (a)(3) is *Current Collections Performance Level.* It measures the amount of current support collected as compared to the total amount owed. Current support is money applied to current support obligations and does not include payment plans for payment towards arrears. Voluntary collections must be included in both the numerator and the denominator. This measure will be computed monthly and the total of all months reported at the end of the year. The equation to compute the measure will be as follows (expressed as a percent):

$$\frac{\text{Total Dollars Collected for Current Support in IV - D Cases}}{\text{Total Dollars Owed for Current Support in IV - D Cases}}$$

As with the other performance measures, this measure derives from section 458A(b)(6) of the Act. Finally, as provided under section 458A(c) of the Act, support collected by one State at the request of another State will be treated as having been collected in full by both States.

Section 458A(b)(6)(D)(i) of the Act sets forth the arrearage collection performance level included in § 305.2(a)(4) *Arrearage Collection Performance Level.* This measure will include those cases where all of the past-due child support was disbursed to the family, or all of the past due child support was retained by the State because all the past due child support was assigned to the State. If some of the past due child support was assigned to the State and some was owed to the family, only those cases where some of the support actually was disbursed to the family will be included. The equation to compute the measure will be as follows (expressed as a percent):

$$\frac{\text{Total number of eligible IV - D cases paying toward arrears}}{\text{Total number of IV - D cases with arrears due}}$$

This measure, unlike the current collections measure, counts cases with child support arrearage collections, rather than the percentage of arrearages collected.

The final performance measure, reflecting section 458A(b)(6)(E)(i) of the Act, appears at paragraph (a)(5) *Cost-Effectiveness Performance Level.* This measure compares the total amount of IV–D collections for the fiscal year to the total amount of IV–D expenditures the fiscal year. The equation to compute this measure is as follows (expressed as a ratio):

$$\frac{\text{Total IV - D Dollars Collected}}{\text{Total IV - D Dollars Expended}}$$

This indicator provides a basic cost-benefit analysis of a child support enforcement program. As provided under section 458A(c) of the Act, collections by one State at the request of another State will be counted as having been collected in full by both States and any amounts expended by a State in carrying out a special project under section 455(e) of the Act will be excluded. (Section 305.32 lists monies that are excluded when determining total dollars expended, such as fees collected from individuals, recovered costs and program income.)

Under § 305.2(b), as specified in section 458A(b)(5) of the Act for incentive purposes, the five performance measures will be weighted in the following manner. Each State will earn five scores based on performance on each of the five measures. The first three measures (paternity establishment, order establishment, and current collections) percentage scores earn a maximum of 100 percent of the collections base as defined in § 305.31(d). The last two measures (collections on arrears and cost-effectiveness) earn a maximum of 75 percent of the collections base as defined in § 305.31(d).

The weighting provision was recommended by State and Federal partners and included in the Secretary's report to Congress as an essential aspect of the incentive system, placing extra emphasis on getting support to families each and every month.

Section 305.31 Amount of incentive payment.

Under paragraph (a) of § 305.31 (which addresses the contents of section 458A(b) of the Act), the incentive payment for a State for a fiscal year is equal to the incentive payment pool for the fiscal year, multiplied by the State incentive payment share for the fiscal year. As specified in section 458A(b)(2) of the Act, paragraph (b) defines the incentive payment pool as:

(1) $422,000,000 for fiscal year 2000;
(2) $429,000,000 for fiscal year 2001;
(3) $450,000,000 for fiscal year 2002;
(4) $461,000,000 for fiscal year 2003;
(5) $454,000,000 for fiscal year 2004;
(6) $446,000,000 for fiscal year 2005;
(7) $458,000,000 for fiscal year 2006;
(8) $471,000,000 for fiscal year 2007;
(9) $483,000,000 for fiscal year 2008; and
(10) For any succeeding fiscal year, the amount of the incentive payment pool for the fiscal year that precedes such succeeding fiscal year multiplied by the percentage (if any) by which the CPI for such preceding fiscal year exceeds the CPI for the second preceding fiscal year. In other words, for each fiscal year following fiscal year 2008, the incentive payment pool will be multiplied by the percentage increase in the CPI between the two preceding years. For example, for fiscal year 2009, if the CPI increases by 1 percent between fiscal years 2007 and 2008, then the incentive pool for fiscal year 2009 will be a 1 percent increase over the $483,000,000 incentive payment pool for fiscal year 2008, or $487,830,000.

Paragraph (c) defines, in accordance with section 458A(b)(3) of the Act, the State incentive payment share for a fiscal year to be the incentive base amount for the State for the fiscal year divided by the sum of the incentive base amounts for all of the States for the fiscal year.

Under paragraph (d), a State's maximum incentive base amount for a fiscal year is the combined sum of: the State's collections base for the fiscal year for each of the paternity establishment, support order, and current collections performance measures; and 75 percent of the State's collections base for the fiscal year for the arrearage payment and cost-effectiveness performance measures. This is specified in section 458A(b)(5) of the Act.

Under paragraph (e), a State's maximum incentive base amount for a fiscal year is zero, unless a Federal audit performed under § 305.60 (described later in this preamble) determines that the data which the State submitted for the fiscal year and which will be used to determine the performance levels involved are complete and reliable. This provision is required by section 458A(b)(5)(B) of the Act. It is essential to ensure the integrity of the incentive system and the timeliness of the determinations. States are accountable for providing reliable data on a timely basis or they receive no incentives. This determination will be made using data submitted no later than the end of the first quarter of the next fiscal year (i.e. December 31). This deadline is needed so each State's data can be audited promptly during the first part of the following year to determine reliability and completeness. Allowing updates, corrections, and adjustments during that period would impede our ability to make final incentive determinations, and would result in continuing adjustment of the amount of the incentives payable to all States.

Finally, under paragraph (f), a State's collections base for a fiscal year, as provided in section 458A(b)(5)(C) of the Act, is equal to: 2 times the sum of the total amount of support collected for Current Assistance cases plus two times the total amount of support collected in Former Assistance cases, plus the total amount of support collected in all other cases during the fiscal year, that is:

2 (Current Assistance collections + Former Assistance collections) + all other collections.

This double-weighting of collections in Current Assistance and Former Assistance cases when calculating the collection base is another key component of the new incentives system. As with the emphasis placed on the current collections performance measure to ensure consistent and timely support to families, the calculation of the State's collection base also emphasizes the goal of helping families become and remain self-sufficient. Under the current incentive system, States lose incentives when families leave the State assistance rolls because collections in non-assistance cases are capped at 115 percent of collections in assistance cases. However, under section 458A of the Act and these regulations, collections in Former Assistance cases, as well as collections in Current Assistance cases will count double, while collections in all other cases (often seen as requiring less work by IV–D programs) will only be counted once. We note that Current Assistance cases do not include cases in which assistance is paid under a Tribal TANF program because the statutory language covers only cases where an assignment to the State is required by the Act. Tribal TANF cases have no such required assignment to the State. Tribal TANF cases will be included in Former Assistance cases to the extent that the individuals formerly were required to assign support rights to the State.

Section 305.32 Requirements applicable to calculations

Section 305.32 establishes certain special provisions applicable to calculating the amount of incentives and penalties. Some are derived from current incentive rules and practice and some are based on explicit rules in section 458A of the Act. They are also applied to penalty calculations because we are using the same measures. Under this section the following conditions apply:

Section 305.32(a) specifies that each measure will be based on data relating to the Federal fiscal year (FY). The Federal fiscal year runs from October 1st of one year through September 30th of the following year. This is consistent with current practice and reference to the fiscal year in section 458A of the Act.

Section 302.32(b) specifies that only collections disbursed or retained, as applicable, and only those expenditures made by the State, in the fiscal year will be used to determine the incentive payment payable for that fiscal year. This is consistent with the way collections have always been counted on Federal reporting forms.

Section 305.32(c) specifies that support collected by one State at the request of another State will be treated as having been collected in full by each State. Required by section 458A(c) of the Act, this maintains the same practice that exists under the current incentive system under section 458 of the Act for the new incentive system.

Section 305.32(d) specifies that amounts expended by the State in carrying out a special project under section 455(e) of the Act will be excluded from the State's total IV–D dollars expended in computing incentive payments. This implements section 458A(c) of the Act, and also appears in section 458 of the Act.

Section 305.32(e) specifies that fees paid by individuals, recovered costs, and program income, such as interest earned on collections, will be deducted from total IV–D dollars expended. This is consistent with § 304.12(b)(4)(iii) which is applicable to the current incentive system under section 458 and the requirement under § 304.50 that States exclude from quarterly expenditure claims an amount equal to all fees, interest and other income earned from services provided under the State IV–D plan.

Section 305.32(f) specifies that States are required to submit data used to determine incentives following instructions and formats required by HHS and on Office of Management and Budget (OMB) approved reporting instruments, and sets December 31st of each calendar year as the final deadline for the submittal of State data for a fiscal year. It includes any necessary data from the previous fiscal year needed to calculate the paternity establishment percentage or any improvements over that fiscal year's performance necessary to earn incentives or avoid penalties for the current fiscal year. This is consistent with the requirement in § 302.15 under which States must maintain statistical, fiscal and other records necessary for reporting and accountability required by the Secretary and make such reports in the form and containing information the Secretary requires. Data submitted as of December 31st will be used to determine the State's performance for the prior fiscal year and the amount of incentive payments due the States. We encourage States to have the capacity to make reports (*e.g.*, year-to-date, previous quarter) available before the end of the reporting year so that we may conduct audits to determine data reliability and completeness earlier. By doing so, States will maximize their opportunity to correct any deficiencies before the end of the reporting year or, at least, by the end of the succeeding fiscal year which the statute allows for the State to take corrective action . A cut-off point is necessary for us to make the required performance determinations and calculations on a timely basis.

Section 305.33 Determination of applicable percentages based on performance levels.

This section sets forth the explicit requirements in section 458A(b)(6) of the Act for determining the applicable percentages used to calculate incentives based on a State's performance levels in the five performance measures.

Paternity Establishment Percentage

Under paragraph (a), a State's paternity establishment performance level for a fiscal year will be, at the option of the State, the IV–D paternity establishment percentage or the Statewide paternity establishment percentage determined under § 305.2 of this part. The applicable percentage for each level of a State's paternity establishment performance is set forth in table 1, except as provided in paragraph (b).

Under paragraph (b), if the State's paternity establishment performance level for a fiscal year is less than 50 percent, but exceeds its paternity establishment performance level for the immediately preceding fiscal year by at least 10 percentage points, then the State's applicable percentage for the paternity establishment performance level is 50 percent.

Support Order

Under paragraph (c), a State's support order performance level for a fiscal year is the percentage of the total number of IV–D cases where there is a support order determined under § 305.2 and § 305.32. The applicable percentage for each level of a State's support order performance can be found on table 1, except as provided in paragraph (d).

Under paragraph (d), if the State's support order performance level for a fiscal year is less than 50 percent, but exceeds the State's support order performance level for the immediately preceding fiscal year by at least 5 percentage points, then the State's applicable percentage is 50 percent.

TABLE 1.—USE THIS TABLE TO DETERMINE THE MAXIMUM INCENTIVE LEVELS FOR THE PATERNITY ESTABLISHMENT AND SUPPORT ORDER PERFORMANCE MEASURES.

If the Paternity Establishment or Support Order Performance Level Is:		
At least: (percent)	But less than: (percent)	The applicable percentage is:
80		100
79	80	98
78	79	96
77	78	94
76	77	92
75	76	90
74	75	88
73	74	86
72	73	84
71	72	82
70	71	80
69	70	79
68	69	78
67	68	77
66	67	76
65	66	75
64	65	74
63	64	73
62	63	72
61	62	71
60	61	70
59	60	69
58	59	68
57	58	67
56	57	66
55	56	65
54	55	64
53	54	63
52	53	62
51	52	61
50	51	60
0	50	0

Current Support Collections

Under paragraph (e), a State's current collections performance level for a fiscal year is equal to the total amount of current support collected during the fiscal year divided by the total amount of current support owed during the fiscal year in all IV–D cases, as determined under §§ 305.2 and 305.32. The applicable percentage with respect to a State's current collections performance level can be found on table 2, except as provided in paragraph (f).

Under paragraph (f), if the State's current collections performance level for a fiscal year is less than 40 percent but exceeds the current collections performance level of the State for the immediately preceding fiscal year by at least 5 percentage points, then the State's applicable percentage is 50 percent.

Arrearage Collections

Under paragraph (g), a State's arrearage collections performance level

for a fiscal year is equal to the total number of eligible IV–D cases in which payments of past-due child support were received and disbursed during the fiscal year, divided by the total number of IV–D cases in which there was past-due child support owed, as determined under §§ 305.2 and 305.32. The applicable percentage with respect to a State's arrearage collections performance level can be found on table 2, except as provided in paragraph (h).

Under paragraph (h), if the State's arrearage collections performance level for a fiscal year is less than 40 percent but exceeds the arrearage collections performance level for the immediately preceding fiscal year by at least 5 percentage points, then the State's applicable percentage is 50 percent.

TABLE 2.—IF THE CURRENT COLLECTIONS OR ARREARAGE COLLECTIONS PERFORMANCE LEVEL IS:

(Use this table to determine the maximum incentive levels for the current and arrearage support collections performance measures.)

At least: (percent)	But less than: (percent)	The applicable percentage is
80		100
79	80	98
78	79	96
77	78	94
76	77	92
75	76	90
74	75	88
73	74	86
72	73	84
71	72	82
70	71	80
69	70	79
68	69	78
67	68	77
66	67	76
65	66	75
64	65	74
63	64	73
62	63	72
61	62	71
60	61	70
59	60	69
58	59	68
57	58	67
56	57	66
55	56	65
54	55	64
53	54	63
52	53	62
51	52	61
50	51	60
49	50	59
48	49	58
47	48	57
46	47	56
45	46	55
44	45	54
43	55	53
42	43	52
41	42	51
40	41	50
0	40	0

Under paragraph (i), a State's cost-effectiveness performance level for a fiscal year is equal to the total amount of IV–D support collected and disbursed or retained, as applicable during the fiscal year, divided by the total amount expended during the fiscal year, as determined under §§ 305.2 and 305.32. The applicable percentage with respect to a State's cost-effectiveness performance level can be found on table 3.

TABLE 3.—IF THE COST-EFFECTIVENESS PERFORMANCE LEVEL IS:

(Use this table to determine the maximum incentive level for the cost-effectiveness performance measure)

At least:	But less than:	The applicable (percent)
5.00		100
4.50	4.99	90
4.00	4.50	80
3.50	4.00	70
3.00	3.50	60
2.50	3.00	50
2.00	2.50	40
0.00	2.00	0

Because of the complexity of the incentives formula set forth in section 458A of the Act and implemented by these regulations, we have included an example of how the system will work in a particular year for State A:

Let's make the following assumptions regarding State A (See table A):

- State A's paternity performance level is 54 percent, making its applicable percent 64 percent (see table 1)
- State A's order establishment performance level is 79 percent, making its applicable percent 98 percent (see table 1)
- State A's current support collections performance level is 41 percent, making its applicable percent 51 percent (see table 2)
- State A's arrearage support collections performance level is 40 percent, making its applicable percent 50 percent (see table 2)
- State A's cost-effectiveness ratio is 3.00, making its applicable percent 60 percent (see table 3)
- State A's collections base is $50 million (determined by 2 times the collections for Current Assistance and Former Assistance cases plus collections for other cases)
- The maximum incentive is:

—$32 million collections base for paternity ($50 mil. times 0.64), plus

—$49 million collections base for orders ($50 mil. times 0.98), plus

—$25.5 million collections base for current collections ($50 mil. times 0.51), plus

—$18.8 million collections base for arrearage collections ($50 million times 0.75 times 0.50) plus

—$22.5 million collections base for cost-effectiveness ($50 million times 0.75 times 0.60) equals

—Resulting in a maximum incentive base amount of $147.8 million for State A.

TABLE A

Measure	State A's performance level	Applicable percent based on performance (percent)	Weight	State A's collection base (assumed to be $50.0 million)
Paternity establishment	54%	64	1.00	$32.0 million.
Order establishment	79%	98	1.00	$49.0 million.

TABLE A—Continued

Measure	State A's performance level	Applicable percent based on performance (percent)	Weight	State A's collection base (assumed to be $50.0 million)
Current collections	41%	51	1.00	$25.5 million.
Arrearage collections	40%	50	0.75	$18.8 million.
Cost-effectiveness	$3.00	60	0.75	$22.5 million.
State A's maximum incentive base amount				$147.8 million.

• We must now make some assumptions regarding the other States. Let's assume that there are only two other States in our country—and the maximum incentive base amount is $84 million for State B and $50 million for State C, making the total maximum incentive base amount $281.8 million for all three States (See table B).

• We must now determine what State A's share of the $281.8 million is. It is 52 percent ($147.8 divided by $281.8)

TABLE B

State	Maximum incentive base amounts	State's share of $281.8 million	Incentive payment pool $422 million (in millions)
A	$147.8	0.52	$219.4
B	84.0	0.30	126.6
C	50.0	0.18	76.0
Totals	281.8	1.00	422.0

• Let us assume the incentive payment pool for the FY is $422 million.

• Since State A's share is 0.52, this State has earned 52 percent of the $422 million incentive payment pool that Congress is allowing, or $219.4 ($422 mil. times 0.52) million incentive payment for this particular fiscal year.

Section 305.34 Payment of Incentives

Section 458A(d) of the Act includes administrative provisions for estimating and paying incentives. Section 305.34 implements those provisions. Under paragraph (a), each State must claim/include one-fourth of its estimated annual incentive payment on each of its four quarterly expenditure reports for a fiscal year. When combined with the other amounts reported on each of the State's four quarterly expenditure reports, the portion of the annual estimated incentive payment as reported each quarter will be included in the calculation of the next quarterly grant awarded to the State under title IV–D of the Act.

Under paragraph (b), following the end of each fiscal year, HHS will calculate the State's annual incentive payment, using the actual collection and expenditure data and the performance data submitted by the State and other States for that fiscal year. To determine the final incentive amounts, OCSE will first audit State-reported data submitted by December 31, or if a data reliability audit has already been performed during that fiscal year, OCSE will confirm that no system's or other changes have occurred in the interim which may have affected the data reliability. A determination of reliability will be made. Because data reliability audits may have to be conducted for some States which did not take advantage of the opportunity for such audits to be conducted during the performance year, final calculation of the State's incentive award will be made in August using actual data and performance levels of the State and other States, factoring in any determinations of incomplete or unreliable data as provided in paragraph (c). Based on this calculation, a positive or negative grant will be awarded to each State under title IV–D of the Act to reconcile the actual annual incentive payment that for a fiscal year with the incentive payment estimated by the State during that year. We are encouraging states to be conservative in their estimates during the phase-in years for the new incentive system. This will decrease the likelihood that HHS will have to make large negative adjustments.

Under paragraph (c), payment of incentives is contingent on a State's data being determined reliable data by Federal auditors, consistent with the requirement for complete and reliable data set forth in section 458A(b)(5)(B) of the Act.

Section 305.35 Reinvestment

Section 458A(f) of the Act requires a State to use incentive payments to supplement and not supplant other funds used by the State in its IV–D program, or otherwise with approval of the Secretary. Under § 305.35, which implements this requirement, paragraph (a) requires a State to expend the full amount of incentive payments received under the IV–D program to supplement, and not supplant other funds used by the States to carry out IV–D program activities; or funds for other activities approved by the Secretary which may contribute to improving the effectiveness or efficiency of the State's IV–D program, including cost-effective contracts with local agencies, whether or not the expenditures for the activity are eligible for reimbursement under title IV–D of the Act.

Under paragraph (b), in those States in which incentive payments are passed through to political subdivisions or localities, in accordance with section 454(22) of the Act and § 302.55, such payments must be used in accordance with this section.

Under paragraph (c), State IV–D expenditures may not be reduced as a result of the receipt and reinvestment of incentive payments.

In order to determine if incentive payments are used to supplement rather than supplant other amounts used by the State to fund the IV–D program, a base year level of program expenditures is necessary. Therefore, under paragraph (d), a base amount will be determined by subtracting the amount of actual incentives paid to the State which was reinvested in the IV–D program for fiscal year 1998 from the total amount expended by the State in the IV–D program during the same period. The rule also allows States, in the alternative, to use the average of the previous three fiscal years (1996, 1997, and 1998) as a base amount. This base amount of State spending will have to be maintained in future years. Incentive payments under this part are to be used in addition to, and not in lieu of, the base amount.

We selected fiscal year 1998 rather than fiscal year 1999 because we believe that the total for fiscal year 1999 may not be available until some time in fiscal year 2000 and we want States to know what their base amount that must be

maintained is in advance of receiving any incentive payments under section 458A. Additionally, we allow the States the alternative of computing a 3-year average. We used this alternative because we believe it might more closely approximate the amount a State has been spending on its IV–D program and will not give undue weight to any extraordinary or non-recurring expenditures that the State may have made in fiscal year 1998.

Based on comments from the proposed regulation, we eliminated the proposed examples under paragraph (e) and revised the language in paragraph (d) to clarify when incentive payments would be subtracted from FY 1998 expenditures. Most commenters found that the examples added an element of confusion to the base year calculation.

Under paragraph (f), that has been redesignated as the new paragraph (e), requests for approval of expending incentives on activities not currently eligible for funding under the IV–D program, but which would benefit the IV–D program (e.g., work programs for noncustodial parents), must be submitted in accordance with instructions issued by the Commissioner of the Office of Child Support Enforcement. We will develop and disseminate by Action Transmittal instructions for States seeking approval to expend incentives on activities that would benefit the IV–D program.

Section 305.36 Incentive Phase-In

Section 201(b) of the Child Support Performance and Incentive Act of 1998 establishes a transition period which phases in the new incentives system under section 458A of the Act. Under § 305.36, the incentive system under part 305 will be phased-in over a three-year period during which both the current system and the new system will be used to determine the amount a State will receive. For fiscal year 2000, a State will receive two-thirds of what it would have received under the incentive formula set forth in § 304.12, and one-third of what it would have received under the formula set forth under part 305. In fiscal year 2001, a State would receive one-third of what it would have received under the incentive formula set forth under § 304.12 and two-thirds of what it would have received under the formula under part 305. In fiscal year 2002, the formula set forth under part 305 will be fully implemented and will be used to determine all incentive amounts.

V. Description of Regulatory Provisions—Penalties and Audit

Former Audit and Penalty Process

In implementing the former requirement at section 452(a)(4) of the Act, the former regulations at part 305 required HHS to conduct an audit at least once every three years, to evaluate the effectiveness of each State's program in carrying out the purposes of title IV–D of the Act and to determine that the program met the title IV–D requirements. These audits were the sole basis for imposing a penalty under former section 403(h) of the Act.

The audits were a comprehensive review of all program requirements. A penalty was assessed in accordance with section 403(a) of the Act when the State failed the audit, but it was suspended during the period the State was under a corrective action plan. If the State passed the follow-up review, the penalty was not applied. In addition, HHS then conducted the comprehensive audit on an annual basis in the case of a State that was subject to a penalty. For a State operating under a corrective action plan, the review at the end of the corrective action period covered only the criteria specified in the notice of non-compliance.

Part 305 of the regulations was removed as part of an omnibus clean-up regulation designed to conform existing program regulations to mandatory changes made by PRWORA and subsequent laws. Since PRWORA and Pub. L. 105–200 significantly changed the audit and penalty provisions of the statute, we removed all of part 305. The clean-up regulation was published February 9, 1999 (64 FR 6237). We include this summary of the former Federal process, however, because under the revised audit and penalty provisions in sections 409(a)(8) and 452 (a)(4) and (g) of the Act, the Secretary is required to assess a penalty if a State IV–D program is determined not to be in substantial compliance with IV–D requirements. As explained in greater detail later in this preamble, the process for making such a determination is based largely on the former audit and penalty standards and procedures.

New Audit and Penalty Process

Under section 409(a)(8) of the Act, if, based on the data submitted by the State for a review, the State program fails to achieve the paternity establishment or other performance standards set by the Secretary; or if an audit finds that the State data is incomplete or unreliable; or if the State failed to substantially comply with one or more IV–D requirements, and the State fails to correct the deficiencies in the succeeding fiscal year following the performance year, then the amounts otherwise payable to the State under title IV–A will be reduced. However under section 409(a)(8)(C) of the Act, a State will be determined to be in substantial compliance with IV–D requirements if the Secretary determines that the noncompliance is of a technical nature which does not adversely affect the performance of the State's IV–D program, or will be determined to have submitted accurate data where the incompleteness or unreliability of the data is of a technical nature which does not affect the determination of the State's performance on the performance standards.

In these regulations, we have relied heavily on the well-established, tested and experienced Federal audit process, which was used for penalties assessed under the former section 403(h) of the Act and former part 305, to establish the new audit regulations. In fact, much of our language governing the audit process is taken almost verbatim from former part 305, particularly in sections dealing with the audit process, State responsibilities, definition of substantial compliance, and notice and assessment of the penalty.

Section 305.40 Penalty Performance Measures and Levels

Section 305.40 establishes the performance measures to be used to determine whether a State IV–D program is performing adequately to avoid a financial penalty under section 409(a)(8)(A)(i)(I) of the Act. As discussed earlier in this preamble, under paragraph (a), there are three performance measures for which States have to achieve certain levels of performance in order to avoid being penalized for poor performance. These measures are paternity establishment, support order establishment, and current collections as set forth in § 305.2 of these regulations.

The levels of performance that determine whether or not a State is subject to a penalty were established based on analysis of historical statistical and financial program data submitted by States. This program data was used to set the expected levels of performance and improvements, which are based on past State performance and reasonable expectations of improved performance. The expectations of performance in this rule were set taking into consideration State concerns, prior work done by State and Federal partners to develop the incentive system, and consultations with State partners about what

constituted reasonable performance levels supported by historical data.

The measures and levels of performance are:

(1) The *paternity establishment percentage* which is required under section 452(g) of the Act for penalty purposes. States have the option of using either the IV–D paternity establishment percentage or the statewide paternity establishment percentage defined in § 305.2. Table 4 shows at which level of performance the State is subject to a penalty under the paternity establishment measure. For example, if State A earned a paternity establishment percent of 34 percent and only improved by 3 percentage points over the previous fiscal year, then State A is subject to a penalty of 1–2 percent of TANF funds, for the first finding.

TABLE 4.—STATUTORY PENALTY PERFORMANCE STANDARDS FOR PATERNITY ESTABLISHMENT

(Use this table to determine the level of performance for the paternity establishment measure that will incur a penalty.)

PEP	Increase required over previous year's PEP	Penalty FOR FIRST FAILURE if increase not met
90% or more	None	No penalty.
75% to 89%	2%	1–2% TANF funds.
50% to 74%	3%	1–2% TANF funds.
45% to 49%	4%	1–2% TANF funds.
40% to 44%	5%	1–2% TANF funds.
39% or less	6%	1–2% TANF funds.

(2) The *support order establishment* performance measure to be used for penalty purposes is the measure defined in § 305.2. For purposes of the penalty with respect to this measure, there is a threshold of 40 percent, below which a State is penalized unless an increase of 5 percent over the previous year is achieved—which will also qualify it for an incentive. Performance in the 40 percent to 49 percent range with no significant increase will not be penalized, but neither will it qualify for an incentive payment. Table 5 shows at which level of performance a State will incur a penalty under the order establishment measure.

TABLE 5.—PERFORMANCE STANDARDS FOR ORDER ESTABLISHMENT

(Use this table to determine the level of performance for the order establishment measure that will incur a penalty.)

Performance level	Increase over previous year	Incentive/Penalty
50% or more	no increase over previous year required	Incentive/No Penalty.
40% to 49%	w/ 5% increase over previous year	Incentive/No Penalty.
	w/out 5% increase	No Incentive/No Penalty.
Less than 40%	w/ 5% increase over previous year	Incentive/No Penalty.
	w/out 5% increase	No Incentive/Penalty equal to 1–2% of TANF funds for the first failure, 2–3% for second failure, and so forth, up to a maximum of 5% of TANF funds.

(3) For the *current collections* performance measure, there is a threshold of 35 percent below which a State is penalized unless an increase of 5 percent over the previous year is achieved (that qualifies it for an incentive). Performance in the 35 percent to 40 percent range with no significant increase will not be penalized, but neither will it qualify for an incentive payment. Table 6 shows at which level of performance the State will incur a penalty under the current collections measure.

TABLE 6.—PERFORMANCE STANDARDS FOR CURRENT COLLECTIONS

(Use this table to determine the level of performance for the current collections measure that will incur a penalty.)

Performance level	Increase over previous year	Incentive/Penalty
40% or more	no increase over previous year required	Incentive/No Penalty.
35% to 40%	w/5% increase over previous year	Incentive/No Penalty.
	w/out 5% increase	No Incentive/No Penalty.
Less than 35%	w/5% increase over previous year	Incentive/No Penalty.
	w/out 5% increase	No Incentive/Penalty equal to 1–2% of TANF funds for the first failure, 2–3% for second failure, and so forth, up to a maximum of 5% of TANF funds.

Under paragraph (b), the provisions applicable to calculations listed under § 305.32, apply to the calculation of performance levels for penalty purposes, e.g., counting only disbursed collections, and double-counting interstate collections.

Section 305.42 Penalty phase-in

Section 305.42 sets a schedule for phasing in the new penalty provisions which relates to the incentive phase-in under § 305.36. States will be subject to penalties for poor performance as of fiscal year 2001. States are subject to the performance penalties based on data reported for FY 2001. Data reported for

FY 2000 will be used as a base year to determine improvements in performance during FY 2001. There is an automatic statutory corrective action period of one fiscal year immediately succeeding the performance year before any penalty will be imposed. If at the end of the corrective action period the deficiency is not corrected, the penalty will be taken. For example, if the Secretary finds with respect to FY 2001, that the State had either failed to achieve the level of performance required or that the State's FY 2001 data was unreliable or incomplete, then the State would be required to correct the deficiency and meet the performance measure during the succeeding year, i.e., FY 2002. If the State has either unreliable or incomplete data or fails the performance measure for the corrective action year, FY 2002, a penalty will be assessed.

Since States' performance will be measured on the basis of the States' own data, a State should be expected to continually monitor its progress toward meeting the performance standards during the course of the year. Similarly, States should continuously monitor their own data for completeness and reliability. OCSE will conduct a data reliability audit for a State during the year upon request by a State and will assess performance, based upon the data submitted by the State, as soon as it is reported at the end of the year. States are on notice, however, that any corrective action which may be necessary to correct either a data or a performance deficiency must be achieved before the end of the fiscal year immediately succeeding the performance year.

Section 305.60 Timing and scope of federal audits

Based on explicit statutory requirements at sections 452(a)(4)(C) and 409(a)(8)(A)(i)(II) of the Act, under § 305.60 OCSE will conduct audits, in accordance with the Government auditing standards of the Comptroller General of the United States—

(1) At least once every three years (or more frequently if the State fails to meet performance standards and reliability of data requirements) to assess the completeness, authenticity, reliability, accuracy and security of data and the systems used to process the data in calculating performance indicators under part 305;

(2) To determine the adequacy of financial management of the State IV–D program, including assessments of:

(i) Whether funds to carry out the State program are being appropriately expended, and are properly and fully accounted for; and

(ii) Whether collections and disbursements of support payments are carried out correctly and are fully accounted for; and

(3) For such other purposes as the Secretary may find necessary, including audits to determine if the State is substantially complying with one or more of the requirements of the IV–D program (with the exception of the requirements of section 454(24) of the Act relating to statewide-automated systems of section 454(27)(A) or (B)(i) relating to the State Disbursement Units).

If a data reliability audit has been performed during the prior year, OCSE will conduct a limited review to determine whether any systems or other changes have occurred which may have affected data reliability or completeness. A State may request a data reliability audit at any time during the year as such reviews do not necessarily require analysis of the full year's data.

Substantial compliance audits are defined in § 305.63 and are discussed later in this preamble. Under these rules the substantial compliance audits will be conducted at the discretion of the Secretary, and are triggered based on substantiated evidence of a failure by the State to meet IV–D program requirements. The evidence that might warrant such an audit to determine substantial compliance include:

(i) The results of 2 or more sequential State self-reviews conducted under section 454(15)(A) of the Act which show evidence of sustained poor performance or indicate that the State has not corrected deficiencies identified in previous self-assessments and that these deficiencies are determined to seriously impact the performance of the State's program; or

(ii) Evidence of a State program's systemic failure to provide adequate services under the program through a pattern of non-compliance over time.

While we recognize the advantage and responsibility to maintain the authority to conduct audits similar to those which resulted in improved State performance in years past, we are committed to the philosophy which focuses on measuring program results, and allowing States the flexibility and responsibility to manage their own programs, while assuring that Federal requirements are met. We expect States to take the self-reviews to determine compliance with IV–D requirements seriously and to use those processes to continually critique and adjust their programs to ensure that children and families are adequately served. These Federal process audits authorized under section 452(a)(4)(C) of the Act provide a fall back measure for the Secretary's use should systemic or serious problems with IV–D programs become apparent.

The Child Support Performance and Incentive Act of 1998, Pub. L. 105–200, established a specific financial penalty for a State's failure to meet statewide-automated systems requirements in section 454(24) of the Act. As a conforming amendment, section 409(a)(8) of the Act was amended to preclude a financial penalty under that section for failing to meet automated systems requirements under section 454(24) of the Act.

Similarly, the Consolidated Appropriations Act for FY 2000, Pub. L. 106–113, established an alternative penalty for States that fail to comply with the State Disbursement Unit (SDU) requirements under section 454(27)(A) and (B)(i) of the Act. As a conforming amendment, section 409(a)(8) of the Act was also amended to preclude a financial penalty under that section for failing to meet automated systems requirements under section 454(27)(A) or (B)(i).

While compliance with particular systems requirements will be excluded from any Federal audit to determine substantial compliance with IV–D requirements, States must still have complete and reliable data and meet the individual IV–D program requirements being audited, as defined in § 305.63, in order to avoid a financial penalty under § 305.61. These program requirements exist independently from the systems requirements under section 454(24) of the Act and, therefore, States will be held accountable for compliance.

Under paragraph (b), as with past audits, during the course of the audit, OCSE will make a critical investigation of the State's IV–D program through inspection, inquiries, observation, and confirmation and use the audit standards promulgated by the Comptroller General of the United States in "Government Auditing Standards."

Section 305.61 Penalty for failure to meet IV–D requirements

To implement the requirements of section 409(a)(8) of the Act, under paragraph (a) of § 305.61, a State is subject to a financial penalty and the amounts otherwise payable to the State under title IV–A of the Act would be reduced:

If, on the basis of:

(i) Data submitted by the State or the results of an audit conducted under § 305.60, the State's program failed to achieve the paternity establishment

percentages, as defined in section 452(g)(2) of the Act and § 305.40, or to meet the support order and current collections performance measures set forth in § 305.40; or

(ii) The results of an audit under § 305.60, the State did not submit complete and reliable data, as defined in § 305.1; or

(iii) The results of an audit under § 305.60, the State failed to substantially comply with one or more of the requirements of the IV–D program, as defined in § 305.63;

And, with respect to the corrective action year immediately following such failure, the State failed to take sufficient corrective action to achieve the appropriate performance levels or compliance or the data submitted by the State are still incomplete or unreliable.

A penalty will be applied only if the State failed to correct any identified deficiencies by the end of this automatic corrective action year. For example, if a State fails the PEP in fiscal year 2001, it must have reliable data and meet the PEP in the succeeding fiscal corrective action year—meaning it must meet the PEP standard for fiscal year 2002 or face a penalty in fiscal year 2003.

Under paragraph (b) of § 305.61, the penalty reductions described under § 305.61(c) (discussed below) will be made for quarters following the end of the automatic corrective action fiscal year following the fiscal year with respect to which the State submitted unreliable or incomplete data or failed the performance measure or was determined not to be in substantial compliance. The penalty will continue until the beginning of the first quarter following the end of the first quarter throughout which the State, as appropriate:

(1) Has achieved the paternity establishment percentages, the order establishment or the current collections performance measures defined in § 305.40; and

(2) Has submitted data that is complete and reliable; or

(3) Is in substantial compliance with the IV–D requirements audited for substantial compliance, as defined in § 305.63.

A State must have reliable and complete data and meet the performance standards in order to avoid imposition of a penalty following the end of the automatic corrective action year.

It is important to note that the statute at section 409(a)(8)(A) of the Act and these regulations clearly require States to submit complete and reliable data for all of the performance measures under sections 452(g) and 458 or incur financial penalties. However, unlike other penalty circumstances, penalties for incomplete or unreliable data will also result in a loss of incentives. When data is incomplete or unreliable, it will be impossible to accurately determine the State's level of performance to either pay incentives or to assess performance. In such cases, a State's data must be complete and reliable by the end of the succeeding fiscal year and must demonstrate that the submitted data meets the performance measures in order to avoid the imposition of a penalty. Correcting incomplete or unreliable data within the automatic one-year corrective action period is not enough; the data must also show that the State performed at a high enough level during the corrective action year to avoid a financial penalty. For example, say a State is determined to have unreliable *current collection performance* data for FY 2001 and the State corrects the unreliable data for FY2001 during FY 2002. The State must still have reliable FY2002 data and meet the *current collection performance* standard for FY 2002 or incur a penalty in FY2003.

It should be noted, with reference to the example above, that the State may need to correct and resubmit its FY2001 data in order to demonstrate improvement which would qualify for incentives or to meet the penalty performance measure during FY2002. If the State will otherwise achieve the minimum performance level without showing an increase over the prior year, then correction of FY2001 data would be unnecessary.

Paragraph (c) sets forth the penalty levels from section 409(a)(8)(B) of the Act under which the payments for a fiscal year under title IV–A of the Act will be reduced by the following percentages:

(1) One to two percent for the first finding;

(2) Two to three percent for the second consecutive finding; and

(3) Not less than three percent and not more than 5 percent for the third or a subsequent consecutive finding.

These section 409(a)(8) penalties, which increase with each subsequent finding, are based upon penalties assessed under the former audit and penalty process in former section 403(h) of the Act. In actual practice, OCSE has used the lower amount for each situation.

Because the penalty is taken as a percentage of the amount payable to the State under part A of title IV, certain provisions applicable to other TANF penalties also apply to this penalty. The provisions in section 409(d) of the Act which provide that the total penalties that may be taken may not exceed 25 percent of the TANF grant applies. In addition, section 410 of the Act provides for appeals when penalties are taken pursuant to section 409 of the Act.

Finally, section 409(a)(12) of the Act which requires that a State spend additional funds to replace the reductions in funds resulting from the imposition of a penalty applies. The TANF regulations published April 12, 1999 at 64 FR 17720 and effective October 1, 1999, contain provisions in new 45 CFR part 262 which address and implement these statutory provisions. We incorporate those provisions by cross reference.

Section 305.62 Disregard of a failure which is of a technical nature.

Section 409(a)(8)(C) of the Act, like the former section 403(h) of the Act, recognizes that certain noncompliance may be insufficient to significantly impact a State's performance or data reliability. Under § 305.62, we implement this concept by providing that a State subject to a penalty under § 305.61(a)(1)(ii) or (iii) may be determined, as appropriate, to have submitted adequate data or to have achieved substantial compliance with one or more IV–D requirements, as defined in § 305.63 (discussed below), if the Secretary determines that the incompleteness or unreliability of the data, or the noncompliance with one or more of the IV–D requirements, are of a technical nature which does not adversely affect the performance of the State's IV–D program or does not adversely affect the determination of the level of the State's paternity establishment or other performance measure percentages.

Section 305.63 Definition of substantial compliance with IV–D requirements.

Because section 409(a)(8) of the Act requires the assessment of a penalty should a State be found, as a result of an audit, to have failed to substantially comply with one or more IV–D requirements which it fails to correct in the corrective action year, we must provide a definition of substantial compliance that will be used by the auditors to measure State compliance with IV–D requirements. Former § 305.20 established, for purposes of the former Federal audit and penalty process, the definition of an effective program in substantial compliance with the requirements of title IV–D of the Act. Therefore, under § 305.63 we use the definition under former § 305.20 as the basis for a determination that a State

failed to achieve substantial compliance with one or more IV–D requirements.

However, there is one significant difference between the new and former audit and penalty process which deals with the required scope of the audit. Under the former statute and regulations, a penalty was based on a complete audit of a State's program for substantial compliance with all of the applicable IV–D requirements. Under section 408(a)(9) of the Act and these regulations, a State may be audited on one, some, or all of the requirements and may be assessed a penalty, if it is found not to comply with one or more IV–D requirements. Assessment of a penalty could be based, therefore, on a targeted audit of specific IV–D requirements. Specifically, for the purposes of a determination under § 305.61(a)(1)(iii), in order to be determined in substantial compliance with one or more of the IV–D requirements as a result of an audit conducted under § 305.60, a State is required to meet the specific IV–D State plan requirement or requirements that were audited. The IV–D requirements subject to audit are contained in part 302 of program regulations, and are measured as described in the following paragraphs.

Under paragraph (a), the State must meet all the requirements under any of the following areas being audited:

Statewide operations, § 302.10;

Reports and maintenance of records, § 302.15(a);

Separation of cash handling and accounting functions, § 302.20; and Notice of collection of assigned support, § 302.54.

These areas are identical to those in former § 305.20, which measured management and accountability of the program.

Under paragraph (b), the State is required to meet the requirements under the following areas in at least 90 percent of the cases reviewed for each criterion being audited, consistent with the requirements used under the former § 305.20:

Establishment of cases, § 303.2(a); and

Case closure criteria, § 303.11.

We believe these criteria should continue to be met in 90 percent of cases reviewed because of their critical nature. They are intended to ensure that cases are opened and closed appropriately.

Under paragraph (c), States will be held to the same test they have been held to under former audit and penalty requirements in place and used since the early to mid-1990s. Under the paragraph, the State is required to meet the following areas in at least 75 percent of the cases reviewed for each criterion being audited:

(1) Collection and distribution of support payments, including: collection and distribution of support payments by the IV–D agency under § 302.32(b); distribution of support collections under § 302.51; and distribution of support collected in title IV—E foster care maintenance cases under § 302.52;

(2) Establishment of paternity and support orders, including: establishment of a case under § 303.2(b); services to individuals not receiving TANF or title IV–E foster care assistance, under § 302.33(a)(1) through (4); provision of services in interstate IV–D cases under § 303.7(a), (b) and (c)(1) through (6) and (8) through (10); location of non-custodial parents under § 303.3; establishment of paternity under § 303.5(a) and (f); guidelines for setting child support awards under § 302.56; and establishment of support obligations under § 303.4(d), (e) and (f);

(3) Enforcement of support obligations, including, in all appropriate cases: establishment of a case under § 303.2(b); services to individuals not receiving TANF or title IV–E foster care assistance, under § 302.33(a)(1) through (4); provision of services in interstate IV–D cases under § 303.7(a), (b) and (c)(1) through (6) and (8) through (10); location of non-custodial parents under § 303.3; enforcement of support obligations under § 303.6 and State laws enacted in accordance with section 466 of the Act, including submitting once a year all appropriate cases in accordance with § 303.6(c)(3) to State and Federal income tax refund offset; and income withholding under § 303.100. In cases in which income withholding cannot be implemented or is not available and the non-custodial parent has been located, States must use or attempt to use at least one enforcement technique available under State laws in addition to Federal and State tax refund offset, in accordance with State laws and procedures and applicable State guidelines developed under § 302.70(b) of this chapter;

(4) Review and adjustment of child support orders, including: establishment of a case under § 303.2(b); services to individuals not receiving TANF or title IV–E foster care assistance, under § 302.33(a)(1) through (4); provision of services in interstate IV–D cases under § 303.7(a), (b) and (c)(1) through (6) and (8) through (10); location of non-custodial parents under § 303.3; guidelines for setting child support awards under § 302.56; and review and adjustment of support obligations under § 303.8;

(5) Medical support, including: establishment of a case under § 303.2(b); services to individuals not receiving TANF or title IV–E foster care assistance, under § 302.33(a)(1) through (4); provision of services in interstate IV–D cases under § 303.7(a), (b) and (c)(1) through (6) and (8) through (10); location of non-custodial parents under § 303.3; securing medical support information under § 303.30; and securing and enforcing medical support obligations under § 303.31; and .

(6) Disbursement of support payments in accordance with the timeframes in section 454B of the Act or the regulation at § 302.32.

Except for the last requirement for disbursement of support collected within the timeframe set forth in requirements for a State Disbursement Unit in section 454B of the Act, the provisions are taken from the former § 305.20. We are using those standards because we still consider them to represent the critical aspects of IV–D program requirements and believe they are essential to any determination of substantial compliance with any of the requirements being audited for that purpose. The subparagraphs, as written, are broad and incorporate revised provisions of title IV–D of the Act, such as any changes in distribution, additional enforcement techniques, revised review and adjustment procedures and evolving medical support expectations that are indicated in the statute or regulations.

The timeframe for disbursement of support collections by the State Disbursement Unit under section 454B of the Act is included because it is one of the essential case processing timeframes added by PRWORA. Other explicit requirements of PRWORA are included by reference to laws enacted under section 466 of the Act and still others, for example, the State Directory of New Hires and other new locate sources, will be evaluated as part of the State's automated system certification.

As with the former audit process which recognized that citing States for each failure to meet a specific timeframe could remove a State's motivation to move forward in such a case, we propose to adopt the provisions from former § 305.20 under which States can receive credit for a case being reviewed if they accomplish the necessary action within the audit period, despite having missed an interim timeframe. We remain committed to this concept in these regulations and have incorporated it into paragraph (d).

Finally, as under the former audit standards in § 305.20, paragraph (e) requires a State to meet the

requirements for expedited processes under § 303.101(b)(2)(i) and (iii), and (e).

Under the new penalty standards in section 409(a)(8) of the Act and the new audit responsibilities under section 452(a)(4) of the Act, the Federal audit and subsequent penalty can cover simply one, or a number of IV–D requirements. Using the definition of substantial compliance described above, Federal auditors, States and other interested parties will be aware of the expected level of State performance with respect to any particular requirement being audited.

Section 305.64 Audit procedures and State comments

This section will adopt the same procedures as were in effect under former § 305.12. Under paragraph (a), prior to the start of the actual audit, whether for data reliability and completeness or for substantial compliance, Federal auditors will hold an audit entrance conference with the State IV–D agency. At that conference, the auditors will explain how the audit will be performed and make any necessary arrangements.

Under paragraph (b), at the conclusion of audit fieldwork, Federal auditors will afford the State IV–D agency an opportunity to have an audit exit conference at which time preliminary audit findings will be discussed and the State IV–D agency may present any additional matter it believes should be considered in the audit findings.

Under paragraph (c), after the exit conference, Federal auditors will prepare and send to the State IV–D agency, a copy of an interim report on the results of the audit. Within a specified timeframe from the date the report was sent by certified mail, the State IV–D agency will be able to submit written comments on any part of the report that the State IV–D agency believes is in error. The auditors will note such comments and incorporate any response into the final audit report.

Section 305.65 State cooperation in audit

Also consistent with historic State responsibilities with respect to Federal audits, we incorporated former § 305.13 and require that each State make available to the Federal auditors such records or other supporting documentation (electronic and manual) as the audit staff may request, including records to support the data as submitted on the Federal statistical and financial reports that will be used to calculate the State's performance. On-line access to a State's system and data will expedite the process for both the Federal auditors and the States. We have included specific reference to the data States must submit because it is essential to the auditors' work. States will also be required to make available personnel associated with the State's IV–D program to provide information that the audit staff may find necessary in order to conduct or complete the audit.

We also require, under paragraph (b), that States provide evidence to OCSE that their data are complete and reliable. This ensures the responsibility for maintaining and providing reliable data is the State's responsibility.

As was the case under former audit regulations at § 305.13, we require in paragraph (c), that failure to comply with the requirements of this section with respect to audits conducted under § 305.64 may necessitate a finding that the State has failed to comply with the particular criteria being audited. State cooperation with the audit is essential to assess performance. In addition, States are encouraged to provide Federal auditors with on-line access to their systems and data. On-line access to a State's system and data will expedite the process for both the Federal auditors and the States.

Section 305.66 Notice, corrective action year, and imposition of penalty for failure to meet requirements

Section 305.66 addresses notice to the State of any deficiency or deficiencies identified. Similar to the notice aspects of the former audit process at former § 305.99, paragraph (a) requires that, if the Secretary, on the basis of the results of an audit or review, finds a State to be subject to a penalty, OCSE will notify the State in writing of such finding.

Under paragraph (b), the notice will:

(1) Explain the deficiency or deficiencies which result in the State being subject to a penalty, indicate the amount of the potential penalty, and give reasons for the Secretary's finding; and

(2) Specify that the penalty will be assessed if the State has failed to correct the deficiency or deficiencies cited in the notice during the succeeding fiscal year, referred to as the "corrective action" year. The corrective action year is the fiscal year immediately following the year with respect to which the deficiency occurred.

The State should be continuously monitoring its own performance and taking action to improve performance which its own data shows may fail to achieve the performance measures. The State is also responsible for maintaining proper procedures and controls to ensure data reliability and completeness. OCSE is willing to conduct data reliability audits at any time during the compliance year, but the State should not wait or rely upon the Secretary's determination of a data or a performance deficiency in order to begin corrective action. Two consecutive years of failure (either poor data or poor performance) in the same performance measure criterion will trigger a penalty imposition.

As discussed earlier in the preamble, the imposition of a penalty is subject to certain limitations, appeals and replacement of funds requirements specified in sections 409 and 410 of the Act. We incorporate those statutory requirements in paragraph (b)(2) by cross reference to the specific TANF regulatory provisions in 45 CFR part 262 that implement those requirements.

Under paragraph (c), the penalty will be assessed if the Secretary determines that the State has not corrected the deficiency or deficiencies cited in the notice by the end of the corrective action year. This determination will be made as soon as possible after the end of the corrective action year. The penalty will be assessed, however, commencing with the first quarter following the end of the corrective action year. The statute requires that the penalty must be imposed for a minimum period of one quarter, but may be suspended "following the end of the first quarter throughout which the State program has achieved * * * (compliance)."

We require, as supported by the language of section 409(a)(8) of the Act, under paragraph (d), that only one corrective action period be provided to a State in relation to a given deficiency when consecutive findings of noncompliance are made on that deficiency.

Under paragraph (e), a consecutive finding occurs only when the State does not meet or achieve substantial compliance with the same criterion or with any one of the criteria cited in the notice. A new corrective action year will be triggered by a data deficiency or performance failure under a different criterion than was cited in the prior penalty notice.

VI. Response to Comments

We received twenty-eight comments from representatives of State IV–D agencies, national organizations, and advocacy groups on the proposed rule published October 8, 1999 in the **Federal Register** (64 FR 55074). A summary of the changes made in response to comments is followed by a

summary of the comments received and our responses follows:

Changes Made in Response to Comments

OCSE carefully considered the comments received and made some changes to the final regulation in response. Section 303.35 dealing with the administrative complaint procedure was revised and clarified. Section 305.1(i) on the definition of data reliability was further clarified by including a 95 percent standard for data reliability to be effective for data reported for fiscal year 2001. Section 305.32(f) was revised to add a deadline of December 31 of each calendar year by which date complete and reliable data for the prior fiscal year necessary to compute the prior fiscal year's performance must be submitted to OCSE or the State will not receive incentives for that prior fiscal year. The example of the incentives calculation was removed from the regulation language. The two examples for determining a base year for the reinvestment requirement were removed.

Comments to Section 303.35 Administrative complaint procedure

We received twenty-six comments on the administrative complaint procedure from State IV–D agencies, national organizations and advocacy groups. Of these comments, four expressed strong support for the proposed review procedure and twenty-two expressed opposition to the proposal. Most of those expressing support were advocacy groups. In expressing support for the proposed review process, four commenters stated that the process would appropriately hold IV–D agencies accountable in individual cases, would improve customer satisfaction; would increase efficiency and expedite resolution of individual problems, and could help States identify systemic problems. However, in order to strengthen the proposed review process, these commenters made several suggestions for additions to the regulation.

The twenty-two commenters in opposition to the proposal were from State IV–D directors. Most of these requested that § 303.35 be removed from the final regulations.

We believe that an administrative complaint procedure is an essential component in the child support program. The rule does not dictate how States must implement the complaint procedure. We recognize that many States may already have these procedures in place. The rule sets minimal requirements and States are able to set their own procedures. We have revised the regulatory language to state that an administrative complaint procedure must be in place "as defined by the State." We have addressed individual concerns in the following responses and have revised the regulatory language to address the objections. The comments and our responses are as follows:

1. *Comment:* Three commenters suggested the addition of a specific deadline for State IV–D agencies in responding to client complaints and notifying the complainant of the review determination.

Response: We have not adopted this suggestion to include in the regulation a specific time deadline for response and notification. The intent of this regulation is to ensure that all State IV–D programs have a review process in place, not to dictate specific requirements for States in implementing their complaint procedures.

2. *Comment:* Three commenters recommended the addition of a requirement for State IV–D agencies to establish procedures for informing clients about the availability of the review process.

Response: We have included this suggestion in the regulation, in order to ensure that recipients of IV–D services are informed of the State's review process. We would encourage all States to include this notification in the initial information provided to applicants and those referred for program services.

3. *Comment:* Two commenters suggested we add an analysis of types and origins of complaints as a required element in the State's self-assessment report to allow for the identification and correction of systemic problems.

Response: We have chosen not to include analysis of complaints as required element in the State self-assessment report. However, we would encourage States to regularly examine the types of complaints they are receiving in order to identify and correct any chronic or systemic problems. This examination of complaints could be included in the optional program service enhancements section of the State self-assessment, with a description of practices initiated by the State that are contributing to improved program performance and customer service. In order to assess the need for any future program improvements, we will monitor State implementation of the administrative complaint procedure and seek input from States and other stakeholders.

4. *Comment:* One commenter recommended we require the reviews to be conducted by an independent decision-maker to enhance the credibility and fairness of the process. In so doing, this commenter cited the California statute that includes such a provision.

Response: We have not adopted this recommendation as we are not convinced that an independent decision-maker is necessary to ensure fairness and we wish to provide the maximum flexibility to States in designing and implementing their administrative review procedures. States may utilize an independent reviewer to maximize fairness and due process for all parties involved.

5. *Comment:* Eighteen commenters stated that the proposed regulation is unnecessary as most States already have complaint procedures in place. One commenter stated further that the regulation may create confusion regarding existing State procedures and whether they are/are not in compliance with the new regulation. One commenter stated that, due to existing State procedures, the regulation would provide no new protections for clients but would add administrative burdens to the State. Finally, one commenter stated that each State should be free to set its own complaint procedures.

Response: We believe that an administrative complaint procedure is an essential component in the move to a program based on outcomes and performance-based incentives and penalties. Recipients of services, through administrative complaint processes, should be able to access the IV–D agency and lodge complaints when they have evidence to support specific concerns in their cases. It is not our intent to nor does the rule dictate how States must implement the complaint procedure or to require States to replace their existing procedures with a more formal process. We recognize that many States may already have these procedures in place and do not intend to place additional burdens on those States with these requirements. The rule sets minimal requirements and States are able to set their own procedures. We have revised the regulatory language to state that an administrative complaint procedure must be in place "as defined by the State."

6. *Comment:* Sixteen commenters expressed concern that the proposed regulation would divert fiscal and personnel resources away from the primary IV–D mission. One commenter stated further that this diversion of resources could ultimately result in decreased agency efficiency and customer service. Ten commenters stated further that resources might be drained due to the potential for abuse of

the system by custodial parents who submit repeated complaints, requiring multiple reviews in each case. One commenter stated further that, as a result of this proposal, programs would have difficulty meeting major program goals, with the result of deficient performance in critical program areas. Finally, one commenter requested a more thorough analysis of the costs associated with this proposed regulation.

Response: Since most States already have procedures in place, as asserted in comment #1, this regulation would not require additional resources for them—they may continue with their existing procedures. In establishing their procedures, States have the ability to establish parameters for appropriate complaints and to, therefore, avoid excessive or repeated reviews in a case. For States that do not currently have a complaint procedure in place, this regulation will require some additional resources. However, we feel strongly that customer service and a process for administrative reviews are critical program areas consistent and supportive of the program's mission. Further, we believe that the 66 percent Federal funding of State IV–D programs should allow for sufficient funding to address this requirement.

7. *Comment:* Ten commenters stated that the language of the proposed § 303.35 is vague and overly broad, allowing multiple interpretations and increasing the potential for abuse of the complaint system. Two commenters specifically cited the regulatory language "appropriate action" and "resolving" as examples of this vague, broad language. Two commenters specifically requested that the second sentence in paragraph (a), which stated that the State "must have a procedure for reviewing the individual's complaint and resolving it where appropriate action was not taken", be deleted in order to eliminate the vague language of "resolving" and to require a simpler case review upon request.

Response: To address these concerns, we revised the regulatory language to eliminate reference to resolving complaints but retain language to require States to take any appropriate action. The intent of this regulation is to allow customers a process for having their cases reviewed if an error has occurred and not to require formal administrative hearing processes or adjudication of complaints. We recognize that "resolution" of all complaints would be subject to interpretation. States determine appropriate action in IV–D cases and the complaint procedures is intended to remedy errors, not to allow individuals to dictate actions in a case.

8. *Comment:* Nine commenters opposed this provision on the basis that it is beyond the scope and intent of the statute. One commenter, in referencing congressional intent, specifically cited provisions similar to this regulation that were in welfare reform bills that were rejected prior to the passage of PRWORA. One commenter states that the provision may also be unconstitutional.

Response: Section 1102 of the Act provides the authority to publish regulations that the Secretary deems necessary for the efficient administration of the IV–D program. Using this authority, we remain committed to requiring the administrative complaint procedures as we believe they are a necessary component in the program shift under PRWORA to performance-based incentives and State self-reviews. PRWORA revised Federal audit requirements from a process-based system to a performance-based system. The administrative complaint procedure represents a key element to identify case management problems that would have been captured in the previous, process-based audit system. We have included the administrative complaint procedure in this final rule because these regulations implement this program shift toward a performance-based, rather than process-based system. In the absence of clear legislative statements to the contrary, we do not believe that the failure to enact these administrative complaint procedures in PRWORA was intended to preclude the Secretary from using her regulatory authority under section 1102 of the Act. In addition, we do not believe there is any basis upon which to conclude that this provision would be unconstitutional.

9. *Comment:* Eight commenters referenced the Supreme Court decision in the *Blessing* v. *Freestone* case, stating that the proposed administrative complaint procedure would conflict with the Supreme Court decision in this case. Two additional commenters state that the proposed regulation would infer an "individual right of action", but do not specifically reference the *Blessing* v. *Freestone* case. Five additional commenters expressed a concern that this regulation would result in increased litigation against the State IV–D agency.

Response: The United States Supreme Court, in the case of *Blessing* v. *Freestone*, 520 U.S. 329 (1997), ruled unanimously that title IV–D did not create an individually enforceable right to force States to "substantially comply" with all of the requirements of the IV–D program. The administrative complaint procedure established under § 303.35 does not conflict with the Court's decision in that case, nor does it establish or infer an "individual right of action" to pursue judicial remedies for failure to provide specific IV–D services. We believe that establishment of such administrative procedures will, in fact, result in a decreased risk of litigation against the State IV–D agency based upon alleged failure of the State to provide specific services required under the statute and implementing regulations. Many of the requirements of title IV–D are concrete, mandatory, and binding upon the State and local agencies. For example, time limits which have been established for certain provision of services, distribution of support, and the like, could be construed as establishing enforceable rights. The establishment of an administrative complaint procedure, however, does nothing substantively to enhance or otherwise affect such rights as may already exist under title IV–D. The establishment of such procedures merely requires that the State have "administrative" pre-judicial review procedures to determine, and possibly correct, failures to take particular actions which may have been required under existing IV–D rules.

The State has broad discretion to determine what sort of an administrative complaint procedure it chooses to establish. We believe that most States, in fact, already have adequate procedures in place and that this new rule may impose virtually no additional requirement or burden on their program operations. In those States which have not established any mechanism for responding to complaints arising from parents' concern that certain mandatory actions have been delayed or were not taken at all, we believe that creating a forum to review such allegations will lead to increased customer satisfaction and should actually reduce the risk of judicial challenges to the State IV–D program.

10. *Comment:* Six commenters expressed concern that this provision would remove State discretion in determining and using the most appropriate enforcement tools. Instead, the provision would allow the customers to dictate enforcement in their cases.

Response: We disagree that this provision would allow customers to dictate enforcement or would remove appropriate State discretion. The rule does not mandate that the State take any particular action in response to a complaint. States will continue to have

responsibility for determining and using the appropriate actions and enforcement tools in a particular case in accordance with Federal regulations. This regulation is simply intended to allow recipients of IV–D services a mechanism for requesting a review of their cases when there is evidence that an action should have been taken by the IV–D agency. For example, a IV–D customer might request a review if he or she has provided information to the IV–D agency on the obligated parent's place of employment, but no action has been taken within federally required timeframes to institute wage withholding.

11. *Comment:* Four commenters stated that OCSE has provided inadequate documentation to justify the need for regulation in this area. Three commenters proposed further that OCSE and the States work together on this proposal to assess the need for regulation. One of these commenters suggested that OCSE convene a national workgroup to assess the need for regulation and, if necessary, draft more explicit regulatory language. Finally, one commenter requested a more thorough analysis of the costs associated with this proposed regulation.

Response: OCSE remains committed to partnership with States and consultation with our stakeholders. However, we are also committed to prioritizing customer service and feel that this regulation is necessary to ensure appropriate service for all IV–D customers. We will work with States to provide technical assistance and share best practices for implementing administrative complaint procedures. In this process, we will seek input from States and other stakeholders for further improvements.

12. *Comment:* Four commenters questioned OCSE's decision to regulate in this area, citing the recent commitment of OCSE and HHS to avoid unnecessary regulations.

Response: OCSE believes these requirements are necessary to ensure IV–D customers are given opportunities to raise concerns about their cases. We have drafted language that we believe imposes minimal requirements and allows maximum State flexibility in adopting and implementing administrative complaint procedures.

13. *Comment:* Four commenters expressed concern regarding the language "actions not taken," fearing a potential for litigation or abuse of the system. One commenter requested that, if the entire section 303.35 is not removed, that this "action not taken" language be removed from the final regulations.

Response: We agree with the concern that the proposed regulatory language was subject to multiple interpretations. Thus, we have revised the language "action taken, or not taken" that appeared in the NPRM to provide that individuals may request a review when there is evidence that an action should have been taken in their particular cases. The language now reads: "Each State must have an administrative complaint procedure, defined by the State, to allow individuals the opportunity to request an administrative review, and must take appropriate action if there is evidence that an error has occurred or an action should have been taken on a case." This final rule will ensure that all States have administrative complaint procedures in place and that recipients are notified of the availability of services and the outcome of the review, but will also allow States the flexibility to define their own administrative complaint procedures.

14. *Comment:* Four commenters asserted that the administrative review requirement would eliminate the efficiency gained by automated systems by essentially returning case management to a case-by-case review.

Response: While it is true that this regulation will require some case review, we disagree that it will eliminate the efficiency of the automated systems. The majority of cases will continue to be handled through automation. This regulation will require case review only in specific instances when the customer requests a review in accordance with State-established procedures. In these instances, we believe case review is appropriate in order to ensure the best possible case management and ensure maximum child support collections for children and families.

15. *Comment:* Two commenters expressed concern that the complaint process implies a requirement for 100% caseload compliance, rather than "substantial" compliance.

Response: These requirements are not intended as an avenue for IV–D customers to lodge complaints without a basis of concern. If the State is taking appropriate actions, in accordance with Federal requirements and its own State procedures, there should be no basis for lodging a complaint. States are expected to comply with Federal requirements in all cases. However, they will only be penalized when they are not in substantial compliance.

16. *Comment:* Two commenters expressed concern that the purpose of the proposed rule is to create a specific measure of State performance, but the proposed rule did not include any specifics regarding the method of measurement for State performance.

Response: The intent of this regulation is to ensure that all State IV–D agencies have a complaint system in place. We believe that recipients of services should be able to access the IV–D agency and lodge complaints when they have specific concerns in their cases. However, the administrative complaint procedure is not intended to be used as a specific, quantitative measure of State performance. Nor does the complaint procedure convert the measure of substantial compliance test in State self-assessments to a 100 percent standard. Thus, we do not believe that including a specific method of measurement in the regulation is necessary. States may choose to address results of their procedures in their annual self-assessment reports.

17. *Comment:* Two commenters expressed concern regarding the open-ended nature of the proposal and requested the review process be limited to specific areas or issues. One of these commenters proposed that the review be limited to disputes surrounding the allocation and distribution of child support, and not applied to case management issues.

Response: We encourage IV–D agencies to strive to achieve efficiency and quality customer service in all program areas. The administrative complaint procedure will allow IV–D programs to demonstrate this commitment to improving customer service, by providing recipients of services with a process to express their concerns. We believe that IV–D recipients of services should have the ability to request a review of any aspect of their case, including case management issues. Thus, we have not adopted this specific suggestion to limit the scope of the regulation to disputes involving allocation and distribution of collections, although that is an appropriate area for review, if warranted. However, we have revised the language to require procedures "as defined by the State". This change is intended to allow States flexibility and discretion in structuring their own administrative complaint procedures.

18. *Comment:* Two commenters suggested that an additional paragraph should be added to § 303.35 to explicitly spell out what the rule does and does not require. This suggestion was made due to concern that the regulatory language allows the potential for extreme interpretations, controversy and legal action. In addition, one commenter suggested that, if the final regulations do require administrative reviews of prior

IV–D activity, that a time limit be included so that reviews will only go back for a specific period of time. Finally, one commenter expressed concern that the proposal does not indicate the specific recordkeeping requirements that would be imposed on States with respect to the review process.

Response: While we have not adopted these suggestions, they may be appropriate for State consideration in establishing procedures. As stated earlier, the intent of this regulation is to ensure that all State IV–D programs have some type of complaint process in place, not to dictate the specifics of the procedure. We believe it is preferable and supportable to allow States to establish their own procedures.

19. *Comment:* One commenter questioned whether allowing the custodial parent to review actions taken on their case would be in conflict with safeguarding provisions, stating that the IV–D agency is not allowed to release their work product.

Response: We do not believe that this provision would be in conflict with safeguarding provisions. The regulation does not allow a IV–D customer to review actions taken on his or her case. It requires the State to review the case at the request of the customer where there is evidence an action should have been taken and to notify the individual of the results of the review. This notification would not be a per se violation of the safeguarding requirements. Pursuant to section 454(26) of the Social Security Act, State IV–D programs are required "to have in effect safeguards, applicable to all confidential information handled by the State agency, that are designed to protect the privacy rights of the parties". States must design their administrative complaint procedures to ensure safeguarding requirements are met and that the information provided does not violate the privacy rights of one or both parties.

20. *Comment:* One commenter questioned how the administrative complaint process would be applied in interstate cases.

Response: Under current interstate case processing, applicants and recipients of IV–D services would express concerns to the IV–D agency in the State in which they applied or were referred for services. It would be the responsibility of that IV–D agency to determine whether the complaint involves its own actions or a responding State's actions in the case and to follow up by conducting its own review or contacting the other State's IV–D agency for an administrative review, as appropriate.

21. *Comment:* One commenter indicated that the proposal is ill-timed as it coincides with the implementation of outcome measures, the incentive system and the expansion of penalty standards. The commenter suggested that this provision be delayed to allow OCSE to evaluate the impact of these other measures on program performance.

Response: We believe that the administrative complaint procedure is a central component and an appropriate element of the move toward measuring program results and performance-based incentives. As such, we do not believe that it is appropriate to delay these requirements for the administrative complaint procedures beyond the implementation of the incentive system and other outcome measures.

Comments to Section 305.1 Definitions

1. *Comment:* Two commenters recommended adding a sentence which further explains the meaning of "lack of jurisdiction." The added text would include the following qualifying statement: "Depending on applicable law concerning the subject matter jurisdiction in which the custodial parent or child resides, lack of jurisdiction cases may also include those cases in which the custodial parent or child resides in the civil jurisdictional boundaries of another country or federally recognized Indian Tribe." Another commenter stated the definition of lack of jurisdiction provided is not satisfactory and mentioned that subject matter jurisdiction issues begin with respect to the place of conception.

Response: We believe the sentence in § 305.1(a) is clear and adequate to explain the meaning of "lack of jurisdiction" for the purposes of Federal data reporting. Lack of jurisdiction refers to the practical effect of a State being unable to take action in a case due to lack of jurisdiction or other means to take establishment or collection action in the non-custodial parent's jurisdiction of residence. In cases where enforcement tools such as long arm jurisdiction can be used, there is no lack of jurisdiction.

2. *Comment:* A few commenters compared the proposed regulation with Federal data reporting instructions and expressed confusion over the definition of "collections received and distributed on behalf of title XIX (Medicaid) cases versus the proposed definition of title XIX cases." The commenters' understanding from Federal data reporting instructions is that "Medicaid Only" collections and cases should be reported either as current or former assistance.

Response: The commenter's understanding is incorrect. Federal data reporting instructions for the OCSE–157 (AT–99–15) state that a "Medicaid Only case" is "a case where the child(ren) have been determined eligible for or are receiving Medicaid under title XIX of the Act, but who are not current or former recipients of aid under titles IV–A or IV–E of the Act. "Medicaid Only" cases are reported as never assistance cases." We remind States that "Medicaid Only" is defined and reported differently on the Federal financial reporting form, the OCSE–34A. The OCSE–34A will be the source for calculating a State's collections base for incentive purposes. "Medicaid Only" cases will be reported as current assistance cases on the OCSE–34A, unless the case was formerly on assistance and, therefore, will be reported as a former assistance case. States should refer to OCSE–34A instructions contained in Action Transmittal AT–00–02 and Dear Colleague letter DC–00–28. Under section 458A(b)(5)(C) of the Act, the "State Collections Base" double counts those collections in which the "support obligation * * * is required to be assigned to the State pursuant to Title IV–A (TANF), Title IV–E (Foster Care) or Title XIX (Medicaid) * * *" Incentive data taken from the OCSE–157 report uses total caseload and total collection numbers and are not broken into categories (i.e. current assistance, never assistance, and former assistance) for performance calculations. So, the fact that Medicaid only cases are reported differently on the OCSE–157 and OCSE–34A reports will not have an impact on incentives. However, since several commenters found this difference to be confusing, we will work with States to reconcile this difference in the future.

3. *Comment:* Several commenters requested a specific definition of "reliable data" in § 305.1(i). A few commenters offered definitions of "reliable data" that referred to Comptroller General standards (U.S. General Accounting Office) or specific statistical analysis methodologies, such as Analysis of Variance (ANOVA). Two commenters recommended that monitoring compliance with case closure regulations should be part of the data reliability audits. Another commenter recommended that data reliability audits should measure compliance with Federal reporting instructions.

Response: We have included a 95 percent standard for data reliability in response to comments to make the standard clearer than what was included in the proposed regulation. Our 95 percent standard is based on the unwritten, yet generally accepted 10 percent error rate used by the auditing community and based on our experience in FY 1999 data reliability audits conducted of State IV–D program data to date. We believe the definition of "reliable data" in § 305.1(i) as revised is adequate and preserves needed flexibility as State and Federal partners implement the new incentive, penalty, and audit system. Although no specific reference is made, General Accounting Office standards are included in the definition of "reliable data." We rejected the commenter's suggestion to use the analytical technique known as ANOVA because it is not suited for the comparison of results obtained from one sample of reported data.

While not included in the definition, case closure will be examined as part of the sample reviewed in the Data Reliability Audits. In addition, OCSE employs other methods to assure States are closing cases appropriately. Such methods may include reviewing reported data for large decreases in caseload from year to year and following up with a discretionary audit. State self-assessments are also an important management tool in assuring compliance with Federal requirements. Data Reliability Audits will measure the level of each State's compliance with Federal reporting instructions effectively providing a common standard by which all States will be compared. If a State does not comply with Federal reporting instructions, its data will not be determined to be complete and reliable.

4. *Comment:* One commenter suggested that the determination of data reliability and payment of incentives should not occur until a level playing field is established with statewide certified automated systems in place in all States.

Response: State and Federal partners began collaborating on standardized data definitions over five years ago. Consensus among partners was achieved on almost all details of the revised reporting system approximately two years ago through a State/Federal data definitions work group. The statute does not permit a delay in the assessment of data validity or in the implementation of the new incentive formula until automated systems are in place in all States. Data reliability can and will be assessed in States without certified statewide automated systems. Incentives can also be paid to States with complete and reliable data that may not have a certified automated system. However, more frequent audits may be necessary for those States without an automated system. An audit would be warranted once a previously non-fully automated State places all cases on its automated system or when a State passes its FY1999 audit at or below the 95 percent level for any line item.

5. *Comment:* One commenter suggested that "parent" in the context of a IV–D case could include a legal custodian or guardian who may be obligated to pay support for a child, not just a mother, father, or putative father as described in section 301.1(a) of the proposed rule.

Response: While we agree that individuals other than parents may be obligated to pay support for a child in some cases and understand that several States have provisions that can hold step-parents liable for support, we have retained the term "parent" in § 305.1(a) for consistency with the majority of IV–D cases and with the OCSE–157 definition. States should, however, include IV–D cases where a legal custodian or guardian or step-parent becomes the obligor, and we will consider an expanded definition of the term in revisions to the OCSE–157.

6. *Comment:* Several commenters asked why Federal data reporting instructions for the OCSE–157 contained statements that were not included in the proposed rule. Others requested consistency with Federal reporting forms in a wide variety of definitions and instructions.

Response: We do not believe it is appropriate to include the same level of detail in the instructions in the rules. Federal reporting instructions (AT 99–15) do not conflict with statements in regulations, but rather elaborate on those requirements with greater specificity and examples. States must refer to the detailed instructions that accompany the various reporting forms rather than using the regulations as a guide to completing Federal data reporting forms.

7. *Comment:* One commenter suggested that there was not enough time for States to complete reprogramming of data reporting elements prior to Data Reliability Audits. The commenter requested that proposed definitions be deleted and instead a sentence could be added which refers to definitions contained in Federal reporting instructions. This way, any changes to the instructions are always covered by this section of the regulation.

Response: We believe there has been enough time for States to complete any reprogramming that is necessary. State reprogramming of data reporting elements should have begun with the issuance of form OCSE–157 instructions, AT–98–20 dated July 10, 1998. Limited modifications were made through AT–99–15. States should not be using the proposed rule or this final regulation as a guide to data reporting. States that do not report in a timely manner face a determination of incomplete data.

Almost all of these definitions are included in the statute and should not change frequently. It is appropriate to include definitions of key terms in regulations where they are subject to notice and comment rulemaking.

8. *Comment:* Several commenters expressed confusion about the words "received and distributed" in § 305.1(b) which defines current assistance collections and made various suggestions to provide clarification.

Response: This was intended to address collections made in one fiscal year but disbursed in the next fiscal year. For purposes of Federal data reporting, "distributed" means "disbursed." A State's incentive collections base for a fiscal year will only include collections "disbursed" in the reporting fiscal year for individuals receiving IV–D services.

9. *Comment:* One commenter recommended a phase-in of the data reliability requirement and consultation with States to determine an acceptable standard for fiscal year 2000.

Response: The statute requires that data be determined to be complete and reliable in order for a State to be eligible to receive incentive payments under the new provisions in section 458A of the Act, beginning with FY 2000 data. The requirement for complete and reliable data is being phased-in with the performance-based incentive system, *i.e.* the data upon which one-third and two-thirds of incentive funds will be paid are subject to this requirement in fiscal years 2000 and 2001, respectively. We have included a 95 percent standard for data reliability in these regulations beginning with respect to FY 2001 data. This standard is based on generally accepted standards within the auditing community and based on our experience in data reliability audits conducted to date.

10. *Comment:* One commenter suggested that the Secretary be given discretion to waive requirements in §§ 305.0 through 305.66 for fiscal year 2000. The commenter's rationale included apparent conflicts between the proposed rules and current data

reporting instructions and the uncertainty of projecting State incentives.

Response: There is no statutory authority for the Secretary to waive the many elements of the new incentive system implemented by the regulations. Moreover, the statute is clear enough to be implemented without final regulations. Federal data reporting instructions are not in conflict with the proposed rules, but rather contain more detail. States should follow reporting instructions when reporting information for incentive calculations. Again, the phase-in period will limit State and Federal partners' uncertainty with the new performance-based incentive system.

11. *Comment:* One commenter asked for the specific lines from the OCSE–157 data report that match the elements needed to calculate the incentive collections base described in § 305.1(b)–(d).

Response: In the table below we have provided the specific line numbers from the reporting forms OCSE–157, OCSE–34A, and OCSE–396A which are used to calculate the five performance levels. This information will help States understand how OCSE will calculate State performance, highlight the importance of key data elements of State-reported data, and assist States in making projections of their own performance.

Incentive Measure Formulas (FY 2000 and Beyond)	
INCENTIVE MEASURE	**FORM AND LINE NUMBERS**
IV-D PEP	
Number of Children in the Caseload in the FY or as of the end of the FY Who Were Born Out-of-Wedlock with Paternity Established or Acknowledged / Number of Children in the Caseload as of the End of the FY Who were born	OCSE-157 Line 6 / OCSE-157 Line 5 (of the preceding FY)
STATEWIDE PEP	
Number of Minor Children in the State Born Out-of-Wedlock with Paternity Established or Acknowledged During the FY / Number of Children in the State Born Out-of Wedlock During the Preceding FY	OCSE-157 Line 9 / OCSE-157 Line 8 (of the preceding FY)
SUPPORT ORDER ESTABLISHMENT	
Number of IV-D Cases with Support Orders / Number of IV-D Cases	OCSE-157 Line 2 / OCSE-157 Line 1
CURRENT COLLECTIONS	
Amount Collected for Current Support in IV-D Cases / Amount Owed for Current Support in IV-D Cases	OCSE-157 Line 25 / OCSE-157 Line 24
ARREARAGE COLLECTIONS	
Number of IV-D Cases Paying Toward Arrears / Number of IV-D Cases With Arrears Due	OCSE-157 Line 29 / OCSE-157 Line 28
COST EFFECTIVENESS	
Total IV-D Dollars Collected / Total IV-D Dollars Expended	OCSE-34A Lines 8 + 5 + 13 of column (e) / OCSE-396A Lines 9 columns (A) + (C) - 1(b) columns (A) + (C)
STATE COLLECTIONS BASE	
2(Current Assistance + Former Assistance Collections) + Never Assistance Collections	OCSE-34A: 2((Line 8 columns a+b+c) + (Line 5 columns a+b+c)) + Line 8 column d + Line 5 column d + Line 13 column e

Comments to Section 305.2 Performance Measures

1. *Comment:* One commenter recommended allowing States to exclude cases where it is impossible to establish paternity for children born out-of-wedlock in the preceding year. Examples of cases to exclude included: Mother's noncooperation, death of child or putative father before paternity establishment, custodial parent closes case before paternity establishment, and inconclusive genetic testing. A second commenter asked if situations where paternity is contested for a child born within marriage should be included. A third commenter asked if a child can be excluded if good cause was in effect at any time during the fiscal year or must it be in effect at the end of the fiscal year.

Response: Some of the examples cited are very rare and are accounted for within the allowable tolerances in the performance standards. The performance standards for paternity establishment and other measures do not require 100% compliance in every case before an incentive can be earned or a penalty is avoided. State and Federal partners and Congress recognized that perfect performance was

not possible and decided to focus on effective or significantly improved performance.

Moreover, section 452(g)(2) of the Act requires that States exclude children in cases involving good cause. This would apply to cases where a good cause finding was in effect at any time during the year. OCSE has issued more detailed reporting instructions which instruct States to exclude children where there is noncooperation due to good cause or death of a parent as provided for under section 452(g) of the Act.

In addition, most State laws presume that a child born within a marriage is legitimate. These children could be determined to be born out-of-wedlock only if allowable under State law and then only if a court determined the presumed father could not have been the child's biological parent.

2. *Comment:* A number of commenters wanted Federal data reporting instructions and the proposed rule to be consistent. One commenter believed that "case count at a point in time" was not as specific as the wording of the numerator and denominator used in the support order measure itself.

Response: Federal reporting instructions are consistent with the measures as described in this regulation. However, regulations will not be as detailed as reporting instructions. The narrative description of the support order measure in the regulation is correct in identifying it as case count at a point-in-time (the end of this fiscal year). This measure counts cases with at least one support order.

3. *Comment:* One commenter said that the statewide paternity establishment percentage should include only children born in the reporting State and involved in an interstate case as it is inconsistent to include a child born out-of-wedlock in another State.

Response: Revised OCSE–157 reporting instructions issued in AT–99–15 explain that with respect to the statewide paternity percentage, States should report children who were born out-of-wedlock in the State since States get their data from their vital statistics agencies. This is also consistent with the instructions for counting the number of children with paternity established or acknowledged for the statewide PEP. The instructions require States to only include those children born in the State with paternity established or acknowledged.

4. *Comment:* One commenter said that "modification" must be defined in the explanation of the support order establishment measure. An example was cited from the commenter's State where a second case is created when a subsequent child is born to the same parents until the new order can be consolidated with the earlier order.

Response: OCSE data reporting instructions (AT–99–15) explain that this measure is counting cases with orders, and modifications to an existing order should not be reported. However, if a second case is required to be established, it should be counted as a separate case until the two cases with orders are consolidated. When the consolidation occurs, the subsequent case should be subtracted from the count.

5. *Comment:* One commenter observed that § 305.2(a)(4) conflicts with AT–97–17 which requires States to first apply IRS Tax Offset collections to assigned arrears. The commenter believed that the performance criteria penalizes States that follow Federal distribution requirements. Another commenter believed that not counting Federal income tax refund offsets as an arrearage payment when no money goes to the family would lead to States directing efforts away from collecting arrears owed to the State. This would negatively impact the State's cost-effectiveness performance level.

Response: Section 458A(b)(6)(D) of the Act includes a specific requirement with respect to former assistance cases in which some arrearages are owed to the State and some arrearages are owed to the family. In such cases, States may only count cases in which some arrearage payments are distributed to the family. Congress added this provision in response to concerns that States would be able to count former assistance cases as cases paying arrearages for incentive purposes when the only action taken by the State was to submit the arrearages owed to the State for Federal income tax refund offset. Thus States would have no incentive to collect support owed to former assistance families.

In addition, we do not agree with the second commenter's statement that counting arrears payments this way would direct States away from collecting arrears. States have a strong inducement to collect arreas owned to the State in any circumstance because the State receives a direct financial benefit and because these collections help families stay off of TANF, thus increasing self-sufficiency.

6. *Comment:* One commenter believed that States should not be held to performance criteria for areas that have not been worked out. The commenter cited aspects of interstate cases, such as administrative enforcement and the absence of final regulations implementing the Uniform Interstate Family Support Act.

Response: Interstate cases are a significant part of the child support caseload and the statute does not exclude these cases from the incentive formula's performance measures. Statutory provisions specifically provide for double counting of collections where one State collects support for another State, whether it is a traditional interstate case or an administrative enforcement is employed. Section 458A(c) of the Act requires support collected by one State at the request of another State to be treated as having been collected in full by each State.

7. *Comment:* One commenter said that "total IV–D dollars expended" should be defined better in the explanation of the cost-effectiveness performance measure and added that State program structure should be taken into account.

Response: "Total IV–D dollars expended" is a commonly used term in Federal financial reporting instructions. Instructions given to States for form OCSE–396A provide more detail on how this information should be reported by States. State and Federal partners that recommended the incentive formula to Congress believed all IV–D expenditures should be included in the cost-effectiveness performance measure. States do have the flexibility to structure their programs in many different ways. We encourage States to consider the impact of program structure, among many other factors, in assessing barriers to performance under the new incentive system.

8. *Comment:* One commenter believed § 305.2(a)(1), which describes the paternity establishment performance level, should read the count of children "may" (rather than shall) not include children in cases with a deceased parent or where good cause has been determined. The commenter stated that these cases are few and data reporting from automated systems is too costly and complicated.

Response: Section 452(g)(2) of the Act provides that the total number of children shall not include any child who is dependent by reason of the death of a parent unless paternity is established for such child or any child with respect to whom an applicant or recipient is found to have good cause for refusing to cooperate. Accordingly, these children shall not be included in the count.

9. *Comment:* One commenter recommended that special provision be made for States like California, New York, Florida, and Texas, who have a higher number of immigrants.

Response: The statute governing incentives is very specific and does not allow for any such special provisions. We assume the commenter is referring to cases where one parent resides in a foreign country. While we agree that some cases involving immigrants may present greater challenges to child support enforcement programs, there are often mechanisms for working these cases such as agreements between the State and the foreign country. When there is no jurisdiction to work the case and no mechanism to facilitate government-to-government cooperation, these cases will not be included in the incentive calculation.

It should also be noted that the Child Support Performance and Incentive Act of 1998 requires the Secretary to conduct a study "* * * that identifies any demographic or economic variables that account for differences in the performance levels achieved by the States with respect to the performance measures..." and make recommendations for changes "* * * to the system as may be necessary to ensure that the relative performance of States is measured from a baseline that takes account of any such variables." This report due to the Congress October 1, 2000, will provide useful information to the States and Federal government on the affect such variables have on State performance.

10. *Comment:* One commenter asked a question about counting voluntary collections in the current collections performance level. The commenter stated that there is no amount "owed" in a voluntary payment and therefore it cannot be included in the denominator.

Response: Section 305.2 requires voluntary payments to be included in both the numerator and denominator of the current collections performance level. This is the only way the State can take credit for the voluntary payment as a "collection." In these circumstances, we believe it is reasonable to consider the amount paid to be the amount "owed" until a support order can be established.

11. *Comment:* A few commenters recommended excluding "minor" from the numerator of the statewide paternity establishment percentage because a case may begin when the child is a minor and be resolved after the age of majority in the same fiscal year.

Response: The numerator of the statewide paternity establishment percentage is taken directly from section 452(g) of the Act and, therefore, the word "minor" may not be excluded. Federal data reporting instructions (AT–99–15) state that emancipated children should not be included in the count of children and that States should only include those children who are under 18. However, instructions do allow States to count children who have reached their 18th birthday in the fiscal year being reported. This standardized definition of a minor child was added to address States' desire for a "level playing field" regarding the paternity establishment percentage—that no particular State have an unfair advantage regarding the PEP because of the way that State defines emancipation.

12. *Comment:* One commenter suggested the inclusion of an additional optional performance measure for the current collections performance level. The measure would presumably compare the number of cases paying on current support to the number of cases with current support due.

Response: There is no statutory authority for including a second optional measure for the current collections performance level for incentive payments. In addition, State and Federal partners did not recommend a case-based measure on current support because States treat these collections similarly, unlike arrearage collections which are dealt with in significantly different ways by individual States. However, nothing prevents a State from tracking performance in this way for its own program monitoring purposes. For penalty purposes, we believe States should be measured using the same measure that is used for incentive payments.

Comments to § 305.31 Amount of incentive payment

1. *Comment:* One commenter recommended rewording § 305.31(e) for clarity to read: "A State's maximum incentive base amount for a State for a fiscal year is zero if the fiscal year data submitted by the State to calculate a performance level fails to meet data reliability items as determined by a Federal audit performed under § 305.60(1) of this part."

Response: Paragraph (e) tracks the from statutory language in section 458A(b)(5)(B) and we believe it is clear as written.

2. *Comment:* Several commenters inquired about how HHS will handle downward adjustments in incentive payments for States that overestimated their quarterly claims or whose performance data was found to be incomplete or unreliable. Commenters asked if the funds would go to other States, a pool for future years, or are lost.

Response: In the case of States that overestimated quarterly estimated claims for incentive payments, there will be a final adjustment of IV–D grant awards approximately nine months after the end of the fiscal year. Final adjustments can be either up or down depending upon the State's original estimated quarterly claims, calculation of the traditional cost-effectiveness incentive formula and the proportional distribution of incentive funds to all States based on performance. This mirrors the traditional process in which incentive payments have been made to States. During the phase-in period, this adjustment will be based upon calculation of the traditional cost-effectiveness incentive and calculation of the new performance-based incentives. During fiscal year 2000, only one-third of the incentive pool or $139 million will be available for payment to the States based on the new incentive, while two thirds of a State's incentive will be earned based on the traditional incentive system. Funds from downward adjustments made under the new incentive provisions will go to other States. Funds from downward adjustments attributable to the existing incentive system will be returned to the U.S. Treasury. Because of the uncertainty involved with amounts that individual States will earn under the new incentive system, we encourage States to be conservative in their estimates of incentives for the phase-in years of the new system.

In the case where a State is determined to have incomplete or unreliable data, and is thus ineligible for incentives under the new incentive system, those funds will be redistributed to other States based on their performance for the same fiscal year. We remind commenters that completeness and reliability of a State's performance data will be determined on a measure by measure basis. The determination is not "all or nothing"—incentive funds are calculated based on the State's scores for each of the five performance measures. Accordingly, a State which has incomplete or unreliable data with respect to one (or more) performance measures may still qualify for incentive payments based on its performance levels for the remaining measures.

3. *Comment:* Several commenters stated that the calculation of the incentive formula is too complicated, preventing States from estimating incentives and delaying payment of incentives until all States report data and final calculations are made. One commenter recommended a revised process that allows State and Federal governments to make reasonable decisions about the amount of incentive

payments. Another commenter said that requiring States to estimate their own incentives is contrary to legislation which requires the Secretary to estimate the amount of State incentives. A few commenters asked for a methodology or guidance to estimate incentives, while others recommended speedy estimates or taking into account the phase-in period.

Response: The incentive calculation is explicitly required by statute and therefore, we are unable to modify it. We are aware that it presents challenges to State and Federal planning and implementation. There is a significant amount of uncertainty as we move from the traditional incentive system to one based on performance. As State and Federal partners gain more experience with data reporting and performance under the new system, the ability to predict performance should improve.

We are committed to monitoring the implementation of the new incentive payment process and consulting with States. We will recommend improvements to Congress if elements of the formula prove to be unworkable or contrary to the intent of improving the program's performance.

Federal staff have traditionally made estimated incentive payments based on State estimates of future incentive earnings. The program is forward funded with final adjustments to funding made later as actual data is reported. This process will not change. Federal staff will perform an analysis to determine if State estimates appear to be significantly higher or lower than likely actual incentives and recommend adjustments. We believe this comports with the statutory requirement that the Secretary make estimated payments based on the best information available. In addition, the phase-in period limits the amount of uncertainty with regard to estimating incentives for fiscal years 2000 and 2001.

4. *Comment:* One commenter observed that States should be able to identify whether a case formerly received public assistance by use of an indicator present in State files and the Federal Case Registry. Computer matching of data files could be used to share this information with other States in interstate cases so that collections in former assistance cases can be given double credit in the calculation of the State incentive base.

Response: The commenter correctly identifies that it will be to each State's advantage to identify which cases formerly received public assistance. We encourage States to share this information in interstate cases. We recognize that each State's ability to identify these cases will vary depending upon historical records and automation. While States may not have complete information on older cases, they will benefit from developing a procedure for recording former assistance status on cases in FY 2000 and beyond.

The Federal Case Registry does not currently include a data element which would indicate whether a case formerly received assistance. In the future, such a data element could be considered for discussion by State and Federal partners.

5. *Comment:* Several commenters expressed concern that required Data Reliability Audits would not be completed in order for FY 2000 incentives to be calculated and paid.

Response: Data Reliability Audits for FY 2000 incentives will not begin until FY 2000 data is available from States. OCSE is committed to providing adequate resources for Federal auditors to complete the necessary work to calculate each year's incentive payments. Data Reliability Audits rely on the submission of State-reported data and cooperation of the States. Because of the time it takes to conduct audits in every State, it is imperative that data be submitted on a timely basis. That is why we are imposing a deadline of December 31st for the reporting of final adjusted data for a fiscal year. Audits will be conducted based on the data submitted by States up until December 31st. If these data are determined to be incomplete or unreliable, the State will be subject to a loss of incentive funds for the prior fiscal year. In addition, the results of the fiscal year 1999 audit will be important in determining the level of audit necessary for a State for fiscal year 2000. For those States meeting a high level of reliability in 1999, the audit will not have to be as exhaustive as it will for those States displaying a low level of reliability in 1999, or for those States that have made major changes in their systems or other data related processes. States may request a data reliability audit during FY 2000 if they have the ability to produce an "ad hoc" report using FY 2000 data which OCSE can review.

6. *Comment:* One commenter wrote that using 1998 as a base year for program expenditures will unfairly penalize States that paid for automated systems during this timeframe.

Response: That is why we have included an alternative base period that States may elect to use. States have the option of using the average amount for fiscal years 1996, 1997, and 1998 for determining a State's base year for reinvestment of incentives. Employing a three-year average would decrease the effect of large non-recurring expenditures such as automated systems.

7. *Comment:* One commenter asked how the statutorily-capped amounts of the incentive pool for FY 2000 through FY 2008 were determined. The same commenter inquired if two-thirds of the old incentive formula equals or exceeds the FY 2000 pool of $422 million for all States, will additional money be made available for States to earn the one-third new incentive?

Response: The original statutory requirement for development of a new performance-based incentive formula required the new formula to be cost neutral, meaning not costing more than projections of incentives payments under the old formula. Congress enacted the capped incentive pool amounts contained in section 458A(b)(2) of the Act based on budget estimates for these years.

During the phase-in period of FY 2000–2001, the old and new incentive formulas are in operation concurrently. Thus, for FY 2000 the old formula which is uncapped would be calculated as usual and two-thirds of that amount would be actually paid to the States based on this formula. One-third, or $139 million, of the FY 2000 incentive pool of $422 million would be paid for States' performance on the new formula. Because the old formula is affected by declining TANF collections, which also caps incentives paid for non-TANF collections under the old incentive formula, and the two-thirds phase-in, we do not expect that States will earn more than $422 million.

8. *Comment:* One commenter believed that § 305.32(c) implied that both States may count an interstate administrative enforcement collection in its collections base in addition to traditional interstate collections.

Response: Statutory provisions specifically allow for double counting of collections where one State collects support for another State, whether it is a traditional interstate case or administrative enforcement is employed. Section 458A(c) of the Act provides that support collected by one State at the request of another State shall be treated as having been collected in full by each State. Collections received via administrative enforcement in interstate cases can only be reported by both the responding and initiating States if they meet the requirement of section 458A(c). If, for example, State A uses administrative enforcement to collect support by itself, such as through interstate wage withholding where State A sends a wage withholding request directly to an employer in State B, only

State A would qualify for reporting the collection. Similarly, if State B provides information or other assistance (and not actual collection) to State A in response to a request, it would not be able to report the collection. We will use State-reported data to calculate all components of the incentive formula including the collections base.

9. *Comment:* One commenter asked how the phase-in provisions would impact the payment of incentives under §§ 305.31 and § 305.34 and reinvestment of incentives under section § 305.35.

Response: During fiscal years 2000 and 2001, the old and new incentive formulas are in operation concurrently. Therefore, for fiscal year 2000, States will be able to earn two-thirds of what they earn under the traditional cost-effectiveness formula, which is uncapped. One-third of the $422 million fiscal year 2000 incentive pool or $139 million will be available to all States to be shared under the performance-based incentive formula. For fiscal year 2001, States will be able to earn one-third of what they earn under the traditional cost-effectiveness formula, which is uncapped. Two-thirds of the $429 million fiscal year 2001 incentive pool or $286 million will be available to all States to be shared under the performance-based incentive formula.

The incentive payment process required by § 305.34 remains unchanged during the phase-in period except that we must factor in the performance of all States for the partial (1/3rd or 2/3rd) calculation of the performance-based incentive payment. Complete and reliable State data are required for payment of incentives on the performance-based formula.

The reinvestment requirement described in § 305.35 is applicable to one-third and two-thirds portions of the incentives a State may receive under the new formula for fiscal years 2000 and 2001 respectively.

10. *Comment:* One commenter pointed out an error in the example given at Table B to Paragraph (j).

Response: The commenter was correct in that there was an error in the numbers for two of the fictional States. We corrected that error in the example which appears earlier in this preamble and are eliminating the example at § 305.33 (j) from the final rule, since it was there for illustrative purposes only.

Comments to Section 305.35 Reinvestment

1. *Comment:* Several commenters suggested that the requirement to reinvest incentive funds in the Title IV–D program be phased-in over the same three year period as the new incentive structure. One commenter stated that there is no need for Federal intrusion into this area. Another commenter suggested that the reinvestment requirement be tabled until the new incentive system is fully implemented and data can be validated. One commenter said the rule was unclear regarding the starting date of the reinvestment requirement.

Response: Section 458A(f) of the Social Security Act provides for a phase-in of the requirement for States to reinvest incentive payments which matches the implementation of the new incentive payment system. Only incentive payments based on the new system must be reinvested. Accordingly, one-third of FY 2000 incentives, two-thirds of FY 2001 incentives, and all of FY 2002 incentives and beyond must be reinvested in the IV–D program. There is no statutory authority to delay implementation of the reinvestment requirement.

In the past, there were no requirements on use of incentive funds except that they be shared with political subdivisions that help operate the program. Over the years, the fact that IV–D incentive funds could be used to support State or local programs other than child support drew much attention. The reinvestment requirement had its roots in the consensus of the State and Federal workgroup on incentives. The Congress clearly expressed its belief that financial rewards earned by the IV–D program should be reinvested in the IV–D program by enacting a reinvestment requirement. The requirement to reinvest incentive funds should add critical resources to State efforts to improve the performance of child support enforcement programs.

2. *Comment:* One commenter suggested a third alternative to calculating the base amount of a State's IV–D program investment: the denominator of the previous year's cost effectiveness ratio (total IV–D dollars expended) minus the previous year's incentives earned, only if the cost effectiveness ratio was at least $3.00 and at least two other performance measures remained constant or increased over the previous year.

Response: We have not implemented the commenter's suggested alternative because this alternative method would reward States with average cost-effectiveness and static or increased performance on any two of the other four measures. Its effect would be to lower the base amount of State IV–D expenditures. This method would also be more complicated and might not be applicable to a few States because the proposed performance criteria would not be met. Our intention was to provide a simple method of calculation. We do not believe it is appropriate or consistent with the statutory intent to set criteria based on performance that would allow some States to employ a favorable base calculation method while others could not do so.

3. *Comment:* One commenter suggested a fourth alternative to calculating the base amount of a State's IV–D program investment. A base cost per case formula was suggested to allow greater flexibility for all States in years of substantially declining or increasing caseloads. The formula was not described further.

Response: We have not implemented the commenter's suggested alternative. Under this alternative, substantial increases or decreases in caseload from year to year would significantly affect a State's required investment. States could have difficulty ensuring that the appropriate amount was reinvested. The commenter's alternative method could also have required States to invest more than the value of their incentive payments. Finally, we are not convinced that a base cost per case is something that States should be encouraged to maintain.

4. *Comment:* One commenter suggested clarifying whether the OCSE Commissioner can approve expenditures of incentives outside the IV–D program.

Response: OCSE will issue instructions after the publication of the final regulation which provide the details of the spending approval process.

5. *Comment:* Several commenters stated that the outside examples provided in § 305.35(e) are unclear and should be deleted.

Response: We agree that the examples caused some confusion and therefore have deleted the examples at § 305.35(e) and redesignated § 305.35(f) as § 305.35(e). We have revised paragraph (d) to clarify when incentive amounts may be subtracted from FY 1998 expenditures.

6. *Comment:* A few commenters suggested that the base amount should exclude extraordinary or other one-time non-recurring (e.g., expenses incurred for federal automated system certification) because it would work against States' cost effectiveness.

Response: The exclusion of long term investments was considered and rejected numerous times by State and Federal partners on a number of work groups. It is also not authorized by the statute. Therefore, we have not implemented this suggestion in the final

regulation. We appreciate the difficulty created by capital or nonrecurring expenditures like automated system investments. The rule provides for an alternative base year calculation that would use a three-year average calculation in order to avoid inflated spending in any one year for nonrecurring expenditures. We believe that the calculation of a State's base amount for reinvestment purposes should be consistent with the longstanding method of measuring State program's cost-effectiveness which uses total IV–D expenditures. Total costs are included in the denominator of the cost-effectiveness measure for incentive purposes. Certain costs in addition to systems costs, such as staff training and paternity establishment, may not have immediate payoff in terms of collections. States that wish to minimize the problem of nonrecurring expenditures in 1998 should elect to use the three-year average base amount calculation provided in the final rule.

7. *Comment:* Two commenters believed the baseline of historic State expenditures should include all State expenditures, including incentive payments. The commenters also argued that the proposed rule ignored the reality that State money is fungible, or easily mixed with other funds.

Response: The inclusion of State incentive payments as expenditures would require States that have historically used incentive funds to support the IV–D program to increase their spending by the amount of any new incentive funds that they received. The reinvestment requirement is not intended to force States to extraordinarily increase program funding. However, we recognize that once Federal funds are transmitted to a State, they become mixed with other funds and can not be identified as "IV–D incentive funds." A State will be allowed to subtract the incentive funds received only to the extent that the State can document that they were re-invested in the IV–D program.

8. *Comment:* One commenter asked when the instructions on what non-IV–D activities would be acceptable for the use of incentive funds would be issued? The commenter also asked if such identified activities would be eligible for regular Federal financial participation at 66%.

Response: After publication of the final regulations, OCSE will issue instructions on how States may request to spend incentive funds on activities not currently eligible for funding under the IV–D program, but which would benefit the IV–D program. However, while the statute allows incentives to be used for expenditures outside the IV–D program, these instructions will offer suggestions for acceptable uses of incentive funds that will not be all inclusive and will require documentation of proposed spending. There is no statutory authority to expand eligibility for Federal IV–D funding of ineligible activities.

9. *Comment:* One commenter asked how will the Federal government know if individual counties have complied with the reinvestment requirement and who is responsible for ensuring compliance. Another commenter stated that the proposed rule did not address what will occur when a State is deemed to be supplanting State funds previously used to fund IV–D functions.

Response: States are responsible for ensuring that all components of their IV–D programs comply with all Federal requirements, including local or county IV–D programs, vendors, or other entities that perform IV–D services under contract or cooperative agreement. Federal auditors' and central and regional office staff will have a role in monitoring State compliance with the reinvestment requirement. Potential Federal actions include financial audits which could result in disallowances of incentive amounts equal to the amount of funds supplanted.

10. *Comment:* One commenter asked what happens if the State's level of performance and resulting incentives decline in future years after the base amount is determined?

Response: If the amount of a State's incentives declines in future years, it would not affect its base amount. Whatever amount of incentives it received in future years would still have to be spent in addition to the base amount. If this scenario occurs, overall spending (base plus incentives) would necessarily decline if the State decided not to otherwise increase its spending on the program. We remind States that the base amount plus incentives only establishes a minimum level of spending and can always be augmented by State increases in spending on its IV–D program. Additional State spending may address performance problems which have resulted in declining incentive amounts. If a State earns less in incentives, fewer incentive dollars would have to be reinvested the following years.

11. *Comment:* One commenter stated that the proposed rule would preclude a State from making cost reductions since the base amount would need to be spent each year. Another commenter expressed concern about the use of historical data to determine the base amount.

Response: As noted in the proposed rule, we recognized that a fixed base year could potentially penalize States that reduce costs as a result of program improvement or cuts in government spending. On the other hand, we also recognized that a fixed base year would not reflect inflation or other increases in the cost of personnel or services. Thus, any negative effects would be lessened over time. We invited suggestions for alternative methods and did not receive any that we believed were better. The trend established by 25 years of the child support program indicates that most States have increased expenditures from year to year. The trend in increased spending has reflected the statutory expansion of the program and growth in the need for services. Historical data is the most recent available data upon which to calculate a base amount. We believe that the use of historical data was the best method available to us for setting this procedure.

12. *Comment:* One commenter was concerned that the methods proposed to calculate the base amount will mandate that States will artificially inflate their expenditures in order to demonstrate that they satisfied the reinvestment requirement.

Response: State reporting will be audited for reliability in addition to being monitored by Federal regional and central office staff. States that report and claim expenditures that are higher than actual expenditures will be subject to disallowances. Additionally, they will be subject to a loss of incentive payments and penalties for unreliable data, since program expenditures are used to compute incentive payments. Finally, artificial inflation of expenditures would be counterproductive in that would harm the State's cost-effectiveness performance level, thus lowering the amount of incentive funds to which the State would be entitled.

Comments to § 305.40 Penalty performance measures and levels

1. *Comment:* Several commenters stated that performance penalties for order establishment and current support collections should be eliminated from the proposed rule. The commenters identified that the Social Security Act only expressly requires a performance penalty for failure to meet the paternity establishment percentages. One of the commenters recommending elimination characterized the penalties as "discretionary."

Response: Section 409(a)(8) states that reductions of up to five percent would be taken against a State's TANF grant for

the failure to meet other performance standards as may be specified by the Secretary. After developing a national strategic plan, incentive measures, and a new data reporting system, partners met to consider development of a consistent penalty system. Careful consideration was given to the importance of applying penalties to the measures on order establishment and current support collections as indicated by the extra weight given these measures in calculating incentive payments. These measures show a State's success in getting critical regular support payments to families. Substantial consensus that these penalties should be adopted was achieved among all States, whether as a member of the work group that reported its recommendations to the OCSE Commissioner, or consulted through representatives.

2. *Comment:* Several commenters stated that performance penalties for order establishment and current support collection should be delayed. Some of the reasons included current implementation of new data reliability audit process and the ability of all States and territories to report performance data completely, accurately and in accordance with due dates. Since the data reporting ability of States has not been audited, commenters argued, how can penalties be imposed?

Response: Data reporting on the new form is improving, since technical assistance on the new form and the new audit process has been given to States. However, an automatic corrective action period of one year builds-in delay which allows States to identify and to correct either reporting or performance problems prior to being assessed a financial penalty. States should be diligent in continuously monitoring their own performance and data reliability.

3. *Comment:* A few commenters suggested that the performance penalties should be delayed because it is a better management practice to allow the incentives to produce the desired results first and implement negative penalties later if poor performance continues.

Response: State and Federal partners considered the implementation of performance penalties and arrived at a consensus decision to go forward with a performance penalty system required by statute. Performance penalties were recommended to be implemented in FY 2001. In addition, any performance penalty will be delayed an additional (FY 2002) year for corrective action and should performance improve during that year sufficiently to avoid a penalty, no penalty will be assessed. Penalties can also be avoided at the lower levels if a significant level of improvement is achieved over the previous year. The statutory paternity penalty and requirement to "meet other performance standards specified by the Secretary" have been part of the Social Security Act since 1997. Since the performance measures are the same, further delay in implementing penalties while more experience with the incentives is gained would not be appropriate.

4. *Comment:* One commenter stated that the incentive and penalty structure is flawed because a State could receive an incentive and a penalty "on the same measure at the same time."

Response: This statement is potentially true for performance only in paternity establishment. An incentive could be earned for the high performance level while the State's lack of improvement at a significant level would cause a penalty to be incurred. Congress was aware of this possible interaction when the incentive structure was built upon the preexisting penalty structure. The corrective action period of a year not only delays the penalty for one year but also allows the State to avoid the penalty by improved performance. This incentive-penalty interaction is unique to the paternity establishment measure and does not occur with order establishment and current support collections. Under performance standards for order establishment and current support collections, high or significantly improved performance produces an incentive, poor performance triggers a penalty, and intermediate performance warrants neither an incentive nor a penalty.

5. *Comment:* Several commenters expressed concern that a State could be penalized for interstate cases where the State relies on the actions of another State and recommended that States should have the option to exclude these cases.

Response: There is no statutory basis to exclude these cases. Interstate cases represent approximately one-quarter to one-third of the national child support caseload. This would substantially decrease the number of cases for which a State was rewarded to achieve results. Removal from the incentives calculation might actually lead to encouraging neglect of these cases. Indeed, while interstate cases are among the most challenging cases to work, the Uniform Interstate Family Support Act (UIFSA) provides a workable mechanism for States to cooperate in establishing orders and enforcing cases. State and Federal partners continually strive to improve coordination among States on interstate caseloads through training, technical assistance, standardized procedures and dialogue. The statute and data reporting instructions only allow for the exclusion of cases where there is no jurisdiction (international cases and cases involving tribal sovereignty) and no mechanism such as cooperative agreements to work the case.

6. *Comment:* One commenter stated that the penalty structure did not capture important elements of the child support enforcement program and would be better focused on different areas of performance from the incentive measures.

Response: Both State and Federal partners and Congress have clearly expressed that the areas of paternity establishment, order establishment. current support collections are the most critical performance areas of the child support program. These performance measures have been enacted in law and are given greater weight in the incentive calculation. We believe these performance areas best express the results or outcomes desired by the program and the other program requirements while important, may often reflect measures of process. We also believe that incentive and penalty structures should be as consistent as possible. Having a few critial measures sanctioning poor performance allows States to focus resources, whereas scattering penalties among other additional performance areas may diminish the results of the program by spreading resources too thinly. This is also not the only means of assessing State performance. State self assessment, Federal regional office reviews and other Federal audits will contribute to determining whether States are operating programs that meet all IV–D requirements.

7. *Comment:* One commenter suggested that assessing penalties against a State's title IV–A payments was unfair to the Temporary Assistance to Needy Families (TANF) program. This might lead to tension between the child support and temporary assistance programs and penalties taken against either program would reduce resources needed to achieve desired results.

Response: Section 409(a)(8) of the Act clearly requires that penalties for lack of compliance, incomplete or unreliable data reporting or poor performance in the child support program are to be taken against the State's title IV–A payment. Congress has traditionally linked these two programs in many areas and has continued this statutory linkage with performance and other

penalties in the child support program. The consequences of a penalty reducing financial resources and affecting services of a program are real. This reality strengthens the deterrent effect on States to avoid the penalty initially and to improve performance the year following a penalty to avoid repetition of negative consequences.

8. *Comment:* One commenter believed that the order establishment penalty structure is not equitable to States that perform below the fifty percent threshold needed for an incentive. State A improves its performance by five percentage points from one year to the next and receives an incentive. State B performs at higher level than State A, but below the fifty percent threshold and improves by three percentage points over the previous year, but is not eligible for an incentive. A similar example is provided using the current support collections performance levels.

Response: Since the commenter's example actually refers to the bases for receiving or not receiving an incentive, we address our response accordingly. The performance levels for order establishment and current support collections were developed by State and Federal partners after reviewing historical performance data on the child support program. The group established levels that would reward a State for significant improvement from year to year in addition to rewarding high performance above a certain threshold. These performance levels received a nearly unanimous consensus from the States and Congress subsequently enacted these levels without change. The commenter's example is correct. States that achieve a significant improvement of five percentage points but perform at a lower level than other States with no significant improvement will receive a portion of the incentive payment for that measure. The structure is designed to reward significant improvement at lower levels of performance on order establishment and current support collections.

9. *Comment:* One commenter identified that the proposed regulation § 305.61(c) is ambiguous about when and how different levels of penalties will be imposed. The commenter suggested that language should be added that OCSE may impose the higher penalty in situations with multiple penalties, willful or egregious violations, and repeated penalties or violations. In addition, the commenter stated that penalties should be imposed for failing a financial management audit.

Response: Section 305.61 states that the penalty percentage will increase from one to two percent for the first finding, two to three percent for the second finding, and three to five percent for a third or subsequent finding. We believe setting such criteria may confuse States about when a higher penalty might be imposed. The regulation clearly imposes higher penalties for repeated failures from year to year. We believe it is important to preserve discretion of the Secretary in taking penalties and do not want to restrict decisionmaking where each circumstance is considered individually. Section 409 of the Act also limits total penalties assessed by Child Support or TANF against the TANF grant to 25%. We are cognizant that multiple penalties and higher penalties raise awareness of the interaction with the TANF program.

Section 409(a)(8) of the Act also imposes a penalty for failure to submit complete and reliable data. Collections and expenditure data will be reviewed by Federal auditors to determine its completeness and reliability. Section 409(a)(8) does not provide for a penalty for failing a financial management audit. However, financial management problems uncovered by Federal staff can result in the disallowance of claimed expenditures and reductions in grants to States.

Comments to § 305.60 Types and scope of Federal audits

1. *Comment:* Because of concern about the definition of reliable data, the Yellow Book standards should be included in the final rule, or at least referenced.

Response: The final rule refers to standards of the Comptroller General and to the GAO Standards, as promulgated in "Government Auditing Standards" which is the "Yellow Book".

2. *Comment:* States are currently given a very long time in which to correct data problems. Meanwhile, OCSE is using unreliable data to calculate incentives and penalties. Rather than performing a full audit, in FY 2000, OCSE should conduct a baseline data quality audit of all States and provide help to those with unreliable data.

Response: The OCSE Division of Audit is conducting baseline audits of FY 1999 data and informing States of any deficiencies found during the audits. This process provides States the opportunity for implementing necessary corrective actions before reporting FY 2000 data and the initiation of payments under the new incentive system. OCSE is available to provide technical assistance to States.

3. *Comment:* At minimum, § 305.60(c)(2)(i) should indicate that OCSE will audit a program when two or more State self-assessments indicate poor performance. The regulation should also give OCSE the power to conduct an audit on the basis of one self-assessment if that self-assessment indicates serious deficiencies.

Response: The wording of § 305.60(c)(2)(i) and the statute allow the Secretary flexibility to determine when to carry out additional types of audits. We do not believe it would be helpful to mandate the timing of any audits and believe it is appropriate to make the determination based on all the circumstances involved.

4. *Comment:* While the proposed regulations do not address the critical issue of proper distribution, it may be that OCSE intends disbursement to include distribution, but if it does, it should say so.

Response: Distribution in accordance with the Federal statute and regulations is not a part of the new incentive and penalty system. However, proper distribution will still be reviewed under automated data processing system certification reviews for PRWORA and as part of substantial compliance audits. For purposes of reporting on OCSE forms, distribution means disbursement.

5. *Comment:* A two-year timeframe for an audit based on self-assessment results with the possibility of a penalty, is counterproductive. The commenter suggests a graduated approach that includes consultation, technical assistance, and an advisory audit with penalties only occurring after 4 or 5 years of insufficient compliance.

Response: These regulations merely indicate that an audit could be initiated based on two or more poor self assessments. Substantial compliance audits are discretionary and will be used to monitor instances of severe deficiencies in State program case processing.

6. *Comment:* The proposed rule allows States to receive incentives under certain circumstances based on an increase in performance from the previous year. The rules do not address the situation which may occur when the previous year's data was determined incomplete or unreliable. This should be clarified.

Response: If a State fails to report complete and reliable data for any one of the incentive measures, the State will not receive an incentive for the performance measure for which the data are determined to be incomplete or unreliable. If the State is able to correct the problem and substitutes corrected data by the time data are required to be submitted for the next year's incentive payment determination, it will be able

to earn incentives for the next year on improvement measures based on the corrected data. If the data problem is not corrected, a State will not be able to earn incentives based on improved performance.

7. *Comment:* It should be clear that States must pass the audit before any incentives are paid and that periodic audits begin only after the initial audit. The regulation should also clarify OCSE authority to conduct audits more frequently than every 3 years. It should include a catchall provision for audits whenever there is reason to question a State's data reliability. The broad scope of audits should be made clear, including that auditors are not limited to a review of material provided by the State.

Response: We believe the statutory and regulatory language is clear on all of these points. Section 305.60(d) states that "OCSE will conduct audits of the State's IV–D program through inspection, inquiries, observation, and confirmation * * *" as well as a review of State provided material. Before incentives may be paid for any fiscal year, the Secretary must determine, based on an audit, that the State's data are complete and reliable. Thus there is no need to add any language concerning audits of data reliability.

Federal audits have proven to be a valuable tool to focus States on necessary improvements. The integrity of the new incentives and penalty process depends on reliable, complete data and on the Federal auditors' role in assessing whether States produce such data.

8. *Comment:* An audit should review the use of funds to determine if incentive payments are being used to supplement rather than supplant other funds.

Response: Administrative cost audits will be performed and will determine if program funds are expended in accordance with Federal regulations.

9. *Comment:* Section 305.60(c)(2) should provide that "OCSE may initiate audits to determine substantial compliance, or for such other purposes as OCSE may find necessary, whenever it has credible evidence of a failure to comply with one or more of the requirements of the IV–D program."

Response: We believe the wording of § 305.60(c)(2) as currently drafted allows OCSE maximum flexibility to carry out our mandated and authorized duties.

10. *Comment:* Does the term substantial compliance apply to each individual requirement identified? If so, does this mean that a State can be penalized based on an audit that just reviewed one specific area (e.g., case closure) that the State failed?

Response: The term substantial compliance does apply to each individual requirement identified for audit. Yes, a State is subject to a penalty based on a failure to meet requirements in a specific area if corrective measures are not taken during the specified corrective action period.

11. *Comment:* The regulation should provide that when a State fails data reliability requirements, it will be audited annually until it passes. Data reliability should be checked annually for States without a certified system or when there are changes to a system. An audit of data quality should include an audit for compliance with case closure regulations.

Response: OCSE will continue its practice of performing annual audits of any State that it determines does not achieve substantial compliance with a program requirement or requirements or fails data reliability requirements until such time that the State able to achieve substantial compliance or the data reliability requirements are met. Also, a State may make significant changes to the system used to accumulate and report their performance indicator data. These changes will be reviewed by the auditors each year to the extent necessary to determine the completeness and reliability of the performance indicator data. While case closure is not one of the performance measures, it is evaluated during data reliability audits.

12. *Comment:* The rule is unclear whether an error in a case applies to the "life of the case" or is restricted to a given fiscal year. We recommend that the error be restricted to a given fiscal year.

Response: An error in a case is restricted to a given fiscal year.

13. *Comment:* We are concerned about language in proposed § 305.60 describing the types and scope of audits. For example, subsection (b)(2) states that audits would be conducted to determine, "whether collections and disbursements of support payments are carried out correctly and are fully accounted for." With the extremely complicated arrearage distribution rules that became law with PRWORA, we are concerned that a strict interpretation of this language could make States vulnerable to penalties. This language should be rewritten to recognize the complexity of the distribution system and reduce the vulnerability of States.

Response: States are required to meet the distribution rules as enacted in PRWORA. OCSE auditors are knowledgeable of the extremely complicated statutory arrearage distribution rules and this is reflected in the audit instructions.

14. *Comment:* Section 305.63 would allow penalties to be imposed on States based on targeted audits of specific IV–D requirements. We are concerned that targeted audits would not measure "substantial compliance" and would increase the financial exposure of States.

Response: Targeted audits will measure substantial compliance with the area audited. A penalty could be imposed if a State is found not to be in substantial compliance with specific IV–D requirements. Maintaining the Secretary's authority to audit State programs to determine compliance with IV–D requirements is essential to carrying out her oversight responsibilities for the program.

Section 305.62 Disregard of a failure which is of a technical nature.

Comment: A commenter expressed concern about the process under which OCSE will decide not to impose a penalty because of "technical non-compliance". Section 305.62 should provide a concrete definition of "technical non-compliance."

Response: It is impossible to foresee all the circumstances under which a penalty might be imposed for technical non-compliance. Thus, it is not possible to provide a concrete definition. "Technical non-compliance" is defined in a broad way allowing it to be applied to unknown situations that may occur. This definition is based on a historical application that has been used by OCSE to evaluate States' program performance.

VII. Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), the Regulatory Flexibility Act (Pub. L. 96–354), that these regulations will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments. State governments are not considered small entities under the Act.

VIII. Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This rule implements the statutory provisions by specifying the performance-based incentive and penalty systems.

IX. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the rule.

We have determined that these rules will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

X. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. The reports necessary to implement this rule have received OMB approvals. They are the OCSE–157, OMB No. 0970–0177; the OCSE–34A, OMB No. 0970–0181; and the OCSE–396A, OMB No. 0970–0181. This rule requires no other reporting or recordkeeping requirements.

XI. Congressional Review

This rule is not a major rule as defined in 5 U.S.C., Chapter 8.

XII. Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's conclusion is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. These regulations will not have an impact on family well-being as defined in the legislation. This regulation provides an alternative system to reward good performance and sanction poor performance and the new system, like its predecessor, will positively impact families needing support.

XIII. Executive Order 13132 Federalism Assessment

Executive Order 13132 on Federalism applies to policies that have federalism implications, defined as "regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distributions of power and responsibilities among the various levels of government." This rule does not have federalism implications for State or local governments as defined in the executive order.

List of Subjects

45 CFR parts 302 and 303

Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

45 CFR part 304

Child support, Grant programs/social programs, Penalties, Reporting and recordkeeping requirements, Unemployment compensation.

45 CFR part 305

Child support, Grant programs/social programs, Accounting.

(Catalog of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program)

Dated: August 17, 2000.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Dated: August 23, 2000.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons discussed above, we amend title 45 CFR Chapter III of the Code of Federal Regulations as follows:

PART 302—STATE PLAN REQUIREMENTS

1. The authority citation for part 302 is revised to read as follows:

Authority: 42 U.S.C. 651 through 658A, 660, 664, 666, 667, 1302, 1396(a)(25), 1396B(d)(2), 1396b(o), 1396(p), 1396(k).

§ 302.55 [Amended]

2. Section 302.55 is amended by adding the words "and part 305" after "§ 304.12".

PART 303—STANDARDS FOR PROGRAM OPERATIONS

3. The authority section for part 303 continues to read as follows:

Authority: 42 U.S.C 651 through 658, 660, 663, 664, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

4. A new § 303.35 is added to read as follows:

§ 303.35 Administrative complaint procedure.

(a) Each State must have in place an administrative complaint procedure, defined by the State, in place to allow individuals the opportunity to request an administrative review, and take appropriate action when there is evidence that an error has occurred or an action should have been taken on their case. This includes both individuals in the State and individuals from other States.

(b) A State need not establish a formal hearing process but must have clear procedures in place. The State must notify individuals of the procedures, make them available for recipients of IV–D services to use when requesting such a review, and use them for notifying recipients of the results of the review and any actions taken.

PART 304—FEDERAL FINANCIAL PARTICIPATION

5. The authority citation for part 304 continues to read as follows:

Authority: 42 U.S.C. 651 through 655, 657, 658, 1302, 1396(a)(25), 1396b(d)(2), 1396b(o), 1396(p), and 1396(k).

6. Section 304.12 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 304.12 Incentive payments.

* * * * *

(d) *Effective date.* This section is in effect only through September 30, 2001.

(e) *Phase in process.* The amounts payable under this section will be reduced by one-third for fiscal year 2000 and two-thirds for fiscal year 2001.

PART 305—PROGRAM PERFORMANCE MEASURES, STANDARDS, FINANCIAL INCENTIVES, AND PENALTIES

7. A new part 305 is added to read as follows:

Sec.

Authority: 42 U.S.C. 609(a)(8), 652(a)(4) and (g), 658A and 1302.

§ 305.0 Scope.

This part implements the incentive system requirements as described in section 458A (to be redesignated as section 458 effective October 1, 2001) of the Act and the penalty provisions as required in sections 409(a)(8) and 452(g) of the Act. This part also implements Federal audit requirements under sections 409(a)(8) and 452(a)(4) of the Act. Sections 305.0 through 305.2 contain general provisions applicable to this part. Sections 305.31 through 305.36 of this part describe the incentive system. Sections 305.40 through 305.42 and §§ 305.60 through 305.66 describe the penalty and audit processes.

§ 305.1 Definitions.

The definitions found in § 301.1 of this chapter are also applicable to this part. In addition, for purposes of this part:

(a) The term *IV–D case* means a parent (mother, father, or putative father) who is now or eventually may be obligated under law for the support of a child or children receiving services under the title IV–D program. A parent is a separate IV–D case for each family with a dependent child or children that the parent may be obligated to support. If both parents are absent and liable or potentially liable for support of a child or children receiving services under the IV–D program, each parent is considered a separate IV–D case. In counting cases for the purposes of this part, States may exclude cases closed under § 303.11 and cases over which the State has no jurisdiction. Lack of jurisdiction cases are those in which a non-custodial parent resides in the civil jurisdictional boundaries of another country or federally recognized Indian Tribe and no income or assets of this individual are located or derived from outside that jurisdiction and the State has no other means through which to enforce the order.

(b) The term *Current Assistance collections* means collections received and distributed on behalf of individuals whose rights to support are required to be assigned to the State under title IV–A of the Act, under title IV–E of the Act, or under title XIX of the Act. In addition, a referral to the State's IV–D agency must have been made.

(c) The term *Former Assistance collections* means collections received and distributed on behalf of individuals whose rights to support were formerly required to be assigned to the State under title IV–A (TANF or Aid to Families with Dependent Children, AFDC), title IV–E (Foster Care), or title XIX (Medicaid) of the Act.

(d) The term *Never Assistance/Other collections* means all other collections received and distributed on behalf of individuals who are receiving child support enforcement services under title IV–D of the Act.

(e) The term *total IV–D dollars expended* means total IV–D administrative expenditures claimed by a State in a specified fiscal year adjusted in accordance with § 305.32 of this part.

(f) The term *Consumer Price Index or CPI* means the last Consumer Price Index for all-urban consumers published by the Department of Labor. The CPI for a fiscal year is the average of the Consumer Price Index for the 12-month period ending on September 30 of the fiscal year.

(g) The term *State incentive payment share for a fiscal year* means the incentive base amount for the State for the fiscal year divided by the sum of the incentive base amounts for all of the States for the fiscal year.

(h) The term *incentive base amount for a fiscal year* means the sum of the State's performance level percentages (determined in accordance with § 305.33) multiplied by the State's corresponding maximum incentive base on each of the following measures:

(1) The paternity establishment performance level;

(2) The support order performance level;

(3) The current collections performance level;

(4) The arrears collections performance level; and

(5) the cost-effectiveness performance level.

(i) The term *reliable data*, means the most recent data available which are found by the Secretary to be reliable and is a state that exists when data are sufficiently complete and error free to be convincing for their purpose and context. State data must meet a 95 percent standard of reliability effective beginning in fiscal year 2001. This is with the recognition that data may contain errors as long as they are not of a magnitude that would cause a reasonable person, aware of the errors, to doubt a finding or conclusion based on the data.

(j) The term *complete data* means all reporting elements from OCSE reporting forms, necessary to compute a State's performance levels, incentive base amount, and maximum incentive base amount, have been provided within timeframes established in instructions to these forms and § 305.32(f) of this part.

§ 305.2 Performance measures.

(a) The child support incentive system measures State performance levels in five program areas:

Paternity establishment; support order establishment; current collections; arrearage collections; and cost-effectiveness. The penalty system measures State performance in three of these areas: Paternity establishment; establishment of support orders; and current collections.

(1) *Paternity Establishment Performance Level.* States have the choice of being evaluated on one of the following two measures for their paternity establishment percentage (commonly known as the PEP). The count of children shall not include any child who is a dependent by reason of the death of a parent (unless paternity is established for that child). It shall also not include any child whose parent is found to have good cause for refusing to cooperate with the State agency in establishing paternity, or for whom the State agency determines it is against the best interest of the child to pursue paternity issues.

(i) *IV–D Paternity Establishment Percentage* means the ratio that the total number of children in the IV–D caseload in the fiscal year (or, at the option of the State, as of the end of the fiscal year) who have been born out-of-wedlock and for whom paternity has been established or acknowledged, bears to the total number of children in the IV–D caseload as of the end of the preceding fiscal year who were born out-of-wedlock. The equation to compute the measure is as follows (expressed as a percent):

$$\frac{\text{Total \# of Children in IV - D Caseload in the Fiscal Year or, at the option of the State, as of the end of the Fiscal Year who were Born Out - of - Wedlock with Paternity Established or Acknowledged}}{\text{Total \# of Children in IV - D Caseload as of the end of the preceding Fiscal Year who were Born Out - of - Wedlock}}$$

(ii) *Statewide Paternity Establishment Percentage* means the ratio that the total number of minor children who have been born out-of-wedlock and for whom paternity has been established or acknowledged during the fiscal year, bears to the total number of children born out-of-wedlock during the preceding fiscal year. The equation to compute the measure is as follows (expressed as a percent):

$$\frac{\text{Total \# of Minor Children who have been Born Out - of - Wedlock and for Whom Paternity has been Established or Acknowledged During the Fiscal Year}}{\text{Total \# of Children Born Out of Wedlock During the Preceding Fiscal Year}}$$

(2) *Support Order Establishment Performance Level.* This measure requires a determination of whether or not there is a support order for each case. These support orders include all types of legally enforceable orders, such as court, default, and administrative. Since the measure is a case count at a point-in-time, modifications to an order do not affect the count. The equation to compute the measure is as follows (expressed as a percent):

$$\frac{\text{Number of IV - D Cases with Support Orders During the Fiscal Year}}{\text{Total Number of IV - D Cases During the Fiscal Year}}$$

(3) *Current Collections Performance Level.* Current support is money applied to current support obligations and does not include payment plans for payment towards arrears. If included, voluntary collections must be included in both the numerator and the denominator. This measure is computed monthly and the total of all months is reported at the end of the year. The equation to compute the measure is as follows (expressed as a percent):

$$\frac{\text{Number Dollars Collected for Current Support in IV - D Cases}}{\text{Total Dollars Owed for Current Support in IV - D Cases}}$$

(4) *Arrearage Collection Performance Level.* This measure includes those cases where all of the past-due support was disbursed to the family, or retained by the State because all the support was assigned to the State. If some of the past-due support was assigned to the State and some was to be disbursed to the family, only those cases where some of the support actually went to the family can be included. The equation to compute the measure is as follows (expressed as a percent):

$$\frac{\text{Total number of eligible IV - D cases paying toward arrears}}{\text{Total number of IV - D cases with arrears due}}$$

(5) *Cost-Effectiveness Performance Level.* Interstate incoming and outgoing distributed collections will be included for both the initiating and the responding State in this measure. The equation to compute this measure is as follows (expressed as a ratio):

$$\frac{\text{Total IV - D Dollars Collected}}{\text{Total IV - D Dollars Expended}}$$

(b) For incentive purposes, the measures will be weighted in the following manner. Each State will earn five scores based on performance on each of the five measures. Each of the first three measures (paternity establishment, order establishment, and current collections) earn 100 percent of the collections base as defined in § 305.31(e) of this part. The last two measures (collections on arrears and cost-effectiveness) earn a maximum of 75 percent of the collections base as defined in § 305.31(e) of this part.

§ 305.31 Amount of incentive payment.

(a) The incentive payment for a State for a fiscal year is equal to the incentive payment pool for the fiscal year,

multiplied by the State incentive payment share for the fiscal year.

(b) The incentive payment pool is:

(1) $422,000,000 for fiscal year 2000;

(2) $429,000,000 for fiscal year 2001;

(3) $450,000,000 for fiscal year 2002;

(4) $461,000,000 for fiscal year 2003;

(5) $454,000,000 for fiscal year 2004;

(6) $446,000,000 for fiscal year 2005;

(7) $458,000,000 for fiscal year 2006;

(8) $471,000,000 for fiscal year 2007;

(9) $483,000,000 for fiscal year 2008; and

(10) For any succeeding fiscal year, the amount of the incentive payment pool for the fiscal year that precedes such succeeding fiscal year multiplied by the percentage (if any) by which the CPI for such preceding fiscal year exceeds the CPI for the second preceding fiscal year. In other words, for each fiscal year following fiscal year 2008, the incentive payment pool will be multiplied by the percentage increase in the CPI between the two preceding years. For example, if the CPI increases by 1 percent between fiscal years 2007 and 2008, then the incentive pool for fiscal year 2009 would be a 1 percent increase over the $483,000,000 incentive payment pool for fiscal year 2008, or $487,830,000.

(c) The State incentive payment share for a fiscal year is the incentive base amount for the State for the fiscal year divided by the sum of the incentive base amounts for all of the States for the fiscal year.

(d) A State's maximum incentive base amount for a fiscal year is the State's collections base for the fiscal year for the paternity establishment, support order, and current collections performance measures and 75 percent of the State's collections base for the fiscal year for the arrearage collections and cost-effectiveness performance measures.

(e) A State's maximum incentive base amount for a State for a fiscal year is zero, unless a Federal audit performed under § 305.60 of this part determines that the data submitted by the State for the fiscal year and used to determine the performance level involved are complete and reliable.

(f) A State's collections base for a fiscal year is equal to: two times the sum of the total amount of support collected for Current Assistance cases plus two times the total amount of support collected in Former Assistance cases, plus the total amount of support collected in Never Assistance/other cases during the fiscal year, that is: 2(Current Assistance collections + Former Assistance collections) + all other collections.

§ 305.32 Requirements applicable to calculations.

In calculating the amount of incentive payments or penalties, the following conditions apply:]

(a) Each measure is based on data submitted for the Federal fiscal year. The Federal fiscal year runs from October 1st of one year through September 30th of the following year.

(b) Only those Current Assistance, Former Assistance and Never Assistance/other collections disbursed and those expenditures claimed by the State in the fiscal year will be used to determine the incentive payment payable for that fiscal year;

(c) Support collected by one State at the request of another State will be treated as having been collected in full by each State;

(d) Amounts expended by the State in carrying out a special project under section 455(e) of the Act will be excluded from the State's total IV–D dollars expended in computing incentive payments;

(e) Fees paid by individuals, recovered costs, and program income such as interest earned on collections will be deducted from total IV–D dollars expended; and

(f) States must submit data used to determine incentives and penalties following instructions and formats as required by HHS on Office of Management and Budget (OMB) approved reporting instruments. Data necessary to calculate performance for incentives and penalties for a fiscal year must be submitted to the Office of Child Support Enforcement by December 31st, the end of the first quarter after the end of the fiscal year. Only data submitted as of December 31st will be used to determine the State's performance for the prior fiscal year and the amount of incentive payments due the States.

§ 305.33 Determination of applicable percentages based on performance levels.

(a) A State's paternity establishment performance level for a fiscal year is, at the option of the State, the IV–D paternity establishment percentage or the Statewide paternity establishment percentage determined under § 305.2 of this part. The applicable percentage for each level of a State's paternity establishment performance can be found in table 1 of this part, except as provided in paragraph (b) of this section.

(b) If the State's paternity establishment performance level for a fiscal year is less than 50 percent, but exceeds its paternity establishment performance level for the immediately preceding fiscal year by at least 10 percentage points, then the State's applicable percentage for the paternity establishment performance level is 50 percent.

(c) A State's support order establishment performance level for a fiscal year is the percentage of the total number of cases where there is a support order determined under §§ 305.2 and 305.32 of this part. The applicable percentage for each level of a State's support order establishment performance can be found on table 1 of this part, except as provided in paragraph (d) of this section.

(d) If the State's support order establishment performance level for a fiscal year is less than 50 percent, but exceeds the State's support order establishment performance level for the immediately preceding fiscal year by at least 5 percentage points, then the State's applicable percentage is 50 percent.

TABLE 1.—USE THIS TABLE TO DETERMINE THE APPLICABLE PERCENTAGE LEVELS FOR THE PATERNITY ESTABLISHMENT AND SUPPORT ORDER ESTABLISHMENT PERFORMANCE MEASURES.

If the Paternity Establishment or Support Order Establishment Performance Level Is:		
At least: (percent)	But less than: (percent)	The applicable percentage is:
80	.....	100
79	80	98
78	79	96
77	78	94
76	77	92
75	76	90
74	75	88
73	74	86
72	73	84
71	72	82
70	71	80
69	70	79
68	69	78
67	68	77
66	67	76
65	66	75
64	65	74
63	64	73
62	63	72
61	62	71
60	61	70
59	60	69
58	59	68
57	58	67
56	57	66
55	56	65
54	55	64
53	54	63
52	53	62
51	52	61
50	51	60
0	50	0

(e) A State's current collections performance level for a fiscal year is equal to the total amount of current support collected during the fiscal year divided by the total amount of current support owed during the fiscal year in all IV–D cases, determined under §§ 305.2 and 305.32 of this part. The applicable percentage with respect to a State's current collections performance level can be found on table 2, except as provided in paragraph (f) of this section.

(f) If the State's current collections performance level for a fiscal year is less than 40 percent but exceeds the current collections performance level of the State for the immediately preceding fiscal year by at least 5 percentage points, then the State's applicable percentage is 50 percent. r

(g) A State's arrearage collections performance level for a fiscal year is equal to the total number of IV–D cases in which payments of past-due child support were received and distributed during the fiscal year, divided by the total number of IV–D cases in which there was past-due child support owed, as determined under §§ 305.2 and 305.32 of this part. The applicable percentage with respect to a State's arrearage collections performance level can be found on table 2 except as provided in paragraph (h) of this section.

(h) If the State's arrearage collections performance level for a fiscal year is less than 40 percent but exceeds the arrearage collections performance level for the immediately preceding fiscal year by at least 5 percentage points, then the State's applicable percentage is 50 percent.

TABLE 2.—IF THE CURRENT COLLECTIONS OR ARREARAGE COLLECTIONS PERFORMANCE LEVEL IS:

(Use this table to determine the percentage levels for the current collections and arrearage collections performance measures.)

At least (percent	But less than: (percent)	The applicable percentage is: (percent)
80		100
79	80	98
78	79	96
77	78	94
76	77	92
75	76	90
74	75	88
73	74	86
72	73	84
71	72	82
70	71	80
69	70	79
68	69	78

TABLE 2.—IF THE CURRENT COLLECTIONS OR ARREARAGE COLLECTIONS PERFORMANCE LEVEL IS:—Continued

(Use this table to determine the percentage levels for the current collections and arrearage collections performance measures.)

At least (percent	But less than: (percent)	The applicable percentage is: (percent)
67	68	77
66	67	76
65	66	75
64	65	74
63	64	73
62	63	72
61	62	71
60	61	70
59	60	69
58	59	68
57	58	67
56	57	66
55	56	65
54	55	64
53	54	63
52	53	62
51	52	61
50	51	60
49	50	59
48	49	58
47	48	57
46	47	56
45	46	55
44	45	54
43	55	53
42	43	52
41	42	51
40	41	50
0	40	0

(i) A State's cost-effectiveness performance level for a fiscal year is equal to the total amount of IV–D support collected and disbursed or retained, as applicable during the fiscal year, divided by the total amount expended during the fiscal year, as determined under §§ 305.2 and 305.32 of this part. The applicable percentage with respect to a State's cost-effectiveness performance level can be found on table 3.

TABLE 3.—IF THE COST-EFFECTIVENESS PERFORMANCE LEVEL IS:

(Use this table to determine the percentage level for the cost-effectiveness performance measure.)

At least:	But less than:	The app. % is
5.00		100
4.50	4.99	90
4.00	4.50	80
3.50	4.00	70
3.00	3.50	60
2.50	3.00	50
2.00	2.50	40

TABLE 3.—IF THE COST-EFFECTIVENESS PERFORMANCE LEVEL IS:—Continued

(Use this table to determine the percentage level for the cost-effectiveness performance measure.)

At least:	But less than:	The app. % is
0.00	2.00	0

§ 305.34 Payment of incentives.

(a) Each State must report one-fourth of its estimated annual incentive payment on each of its four quarterly collections' reports for a fiscal year. When combined with the amounts claimed on each of the State's four quarterly expenditure reports, the portion of the annual estimated incentive payment as reported each quarter will be included in the calculation of the next quarterly grant awarded to the State under title IV–D of the Act.

(b) Following the end of each fiscal year, HHS will calculate the State's annual incentive payment, using the actual collection and expenditure data and the performance data submitted by December 31st by the State and other States for that fiscal year. A positive or negative grant will then be awarded to the State under title IV–D of the Act to reconcile an actual annual incentive payment that has been calculated to be greater or lesser, respectively, than the annual incentive payment estimated prior to the beginning of the fiscal year.

(c) Payment of incentives is contingent on a State's data being determined complete and reliable by Federal auditors.

§ 305.35 Reinvestment.

(a) A State must expend the full amount of incentive payments received under this part to supplement, and not supplant, other funds used by the State to carry out IV–D program activities or funds for other activities approved by the Secretary which may contribute to improving the effectiveness or efficiency of the State's IV–D program, including cost-effective contracts with local agencies, whether or not the expenditures for the activity are eligible for reimbursement under this part.

(b) In those States in which incentive payments are passed through to political subdivisions or localities, such payments must be used in accordance with this section.

(c) State IV–D expenditures may not be reduced as a result of the receipt and reinvestment of incentive payments.

(d) A base amount will be determined by subtracting the amount of incentive funds received and reinvested in the State IV–D program for fiscal year 1998 from the total amount expended by the State in the IV–D program during the same period. Alternatively, States have an option of using the average amount of the previous three fiscal years (1996, 1997, and 1998) as a base amount. This base amount of State spending must be maintained in future years. Incentive payments under this part must be used in addition to, and not in lieu of, the base amount.

(e) Requests for approval of expending incentives on activities not currently eligible for funding under the IV–D program, but which would benefit the IV–D program, must be submitted in accordance with instructions issued by the Commissioner of the Office of Child Support Enforcement.

§ 305.36 Incentive phase-in.

The incentive system under this part will be phased-in over a three-year period during which both the old system and the new system will be used to determine the amount a State will receive. For fiscal year 2000, a State will receive two-thirds of what it would have received under the incentive formula set forth in § 304.12 of this chapter, and one-third of what it would receive under the formula set forth under this part. In fiscal year 2001, a State will receive one-third of what it would have received under the incentive formula set forth under § 304.12 of this chapter and two-thirds of what it would receive under the formula under this part. In fiscal year 2002, the formula set forth under this part will be fully implemented and would be used to determine all incentive amounts.

§ 305.40 Penalty performance measures and levels.

(a) There are three performance measures for which States must achieve certain levels of performance in order to avoid being penalized for poor performance. These measures are the paternity establishment, support order establishment, and current collections measures set forth in § 305.2 of this part. The levels the State must meet are:

(1) *The paternity establishment percentage* which is required under section 452(g) of the Act for penalty purposes. States have the option of using either the IV–D paternity establishment percentage or the statewide paternity establishment percentage defined in § 305.2 of this part. Table 4 shows the level of performance at which a State will be subject to a penalty under the paternity establishment measure.

TABLE 4.—STATUTORY PENALTY PERFORMANCE STANDARDS FOR PATERNITY ESTABLISHMENT

(Use this table to determine the level of performance for the paternity establishment measure that will incur a penalty.)

PEP	Increase required over previous year's PEP	Penalty FOR FIRST FAILURE if increase not met
90% or more	None	No Penalty.
75% to 89%	2%	1–2% TANF Funds.
50% to 74%	3%	1–2% TANF Funds.
45% to 49%	4%	1–2% TANF Funds.
40% to 44%	5%	1–2% TANF Funds.
39% or less	6%	1–2% TANF Funds.

(2) The support order establishment performance measure is set forth in § 305.2 of this part. For purposes of the penalty with respect to this measure, there is a threshold of 40 percent, below which a State will be penalized unless an increase of 5 percent over the previous year is achieved—which will qualify it for an incentive. Performance in the 40 percent to 49 percent range with no significant increase will not be penalized but neither will it qualify for an incentive payment. Table 5 shows at which level of performance a State will incur a penalty under the child support order establishment measure.

TABLE 5.—PERFORMANCE STANDARDS FOR ORDER ESTABLISHMENT

(Use this table to determine the level of performance for the order establishment measure that will incur a penalty.)

Performance level	Increase over previous year	Incentive/Penalty
50% or more	no increase over previous year required	Incentive.
40% to 49%	w/5% increase over previous year	Incentive.
	w/out 5% increase	No Incentive/No Penalty.
Less than 40%	w/5% increase over previous year	Incentive.
	w/out 5% increase	Penalty equal to 1–2% of TANF funds for the first failure, 2–3% for second failure, and so forth, up to a maximum of 5% of TANF funds.

(3) The *current collections* performance measure is set forth in § 305.2 of this part. There is a threshold of 35 percent below which a State will be penalized unless an increase of 5 percent over the previous year is achieved (that qualifies it for an incentive). Performance in the 35 percent to 40 percent range with no significant increase will not be penalized but neither will it qualify for an incentive payment. Table 6 shows at which level of performance the State will incur a penalty under the current collections measure.

TABLE 6.—PERFORMANCE STANDARDS FOR CURRENT COLLECTIONS

(Use this table to determine the level of performance for the current collections measure that will incur a penalty.)

Performance level	Increase over previous year	Incentive/Penalty
40% or more	no increase over previous year required	Incentive.
35% to 39%	w/5% increase over previous year	Incentive.
	w/out 5% increase	No Incentive/No Penalty.
less than 35%	w/5% increase over previous year	Incentive.
	w/out 5% increase	Penalty equal to 1–2% of TANF funds for the first failure, 2–3% for second failure, and so forth, up to a maximum of 5% of TANF funds.

(b) The provisions listed under § 305.32 of this part also apply to the penalty performance measures.

§ 305.42 Penalty phase-in.

States are subject to the performance penalties described in § 305.40 based on data reported for FY 2001. Data reported for FY 2000 will be used as a base year to determine improvements in performance during FY 2001. There will be an automatic one-year corrective action period before any penalty is assessed. The penalties will be assessed and then suspended during the corrective action period.

§ 305.60 Types and scope of Federal audits.

(a) OCSE will conduct audits, at least once every three years (or more frequently if the State fails to meet performance standards and reliability of data requirements) to assess the completeness, authenticity, reliability, accuracy and security of data and the systems used to process the data in calculating performance indicators under this part;

(b) Also, OCSE will conduct audits to determine the adequacy of financial management of the State IV–D program, including assessments of:

(1) Whether funds to carry out the State program are being appropriately expended, and are properly and fully accounted for; and

(2) Whether collections and disbursements of support payments are carried out correctly and are fully accounted for; and

(c) OCSE will conduct audits for such other purposes as the Secretary may find necessary.

(1) These audits include audits to determine if the State is substantially complying with one or more of the requirements of the IV–D program (with the exception of the requirements of section 454(24) of the Act relating to statewide-automated systems and section 454(27)(A) and (B)(i) relating to the State Disbursement Unit) as defined in § 305.63 of this part. Other audits will be conducted at the discretion of OCSE.

(2) Audits to determine substantial compliance will be initiated based on substantiated evidence of a failure by the State to meet IV–D program requirements. Evidence, which could warrant an audit to determine substantial compliance, includes:

(i) The results of two or more State self-reviews conducted under section 454(15)(A) of the Act which: Show evidence of sustained poor performance; or indicate that the State has not corrected deficiencies identified in previous self-assessments, or that those deficiencies are determined to seriously impact the performance of the State's program; or

(ii) Evidence of a State program's systemic failure to provide adequate services under the program through a pattern of non-compliance over time.

(d) OCSE will conduct audits of the State's IV–D program through inspection, inquiries, observation, and confirmation and in accordance with standards promulgated by the Comptroller General of the United States in "Government Auditing Standards."

§ 305.61 Penalty for failure to meet IV–D requirements.

(a) A State will be subject to a financial penalty and the amounts otherwise payable to the State under title IV–A of the Act will be reduced in accordance with § 305.66:

(1) If on the basis of:

(i) Data submitted by the State or the results of an audit conducted under § 305.60 of this part, the State's program failed to achieve the paternity establishment percentages, as defined in section 452(g)(2) of the Act and § 305.40 of this part, or to meet the support order establishment and current collections performance measures as set forth in § 305.40 of this part; or

(ii) The results of an audit under § 305.60 of this part, the State did not submit complete and reliable data, as defined in § 305.1 of the part; or

(iii) The results of an audit under § 305.60 of this part, the State failed to substantially comply with one or more of the requirements of the IV–D program, as defined in § 305.63; and

(2) With respect to the immediately succeeding fiscal year, the State failed to take sufficient corrective action to achieve the appropriate performance levels or compliance or the data submitted by the State are still incomplete and unreliable.

(b) The reductions under paragraph (c) of this section will be made for quarters following the end of the corrective action year and will continue until the end of the first quarter throughout which the State, as appropriate:

(1) Has achieved the paternity establishment percentages, the order establishment or the current collections performance measures set forth in § 305.40 of this part;

(2) Is in substantial compliance with IV–D requirements as defined in § 305.63 of this part; or

(3) Has submitted data that are determined to be complete and reliable.

(c) The payments for a fiscal year under title IV–A of the Act will be reduced by the following percentages:

(1) One to two percent for the first finding under paragraph (a) of this section;

(2) Two to three percent for the second consecutive finding; and

(3) Not less than three percent and not more than 5 percent for the third or a subsequent consecutive finding.

(d) The reduction will be made in accordance with the provisions of 45 CFR 262.1(b)–(e) and 262.7.

§ 305.62 Disregard of a failure which is of a technical nature.

A State subject to a penalty under § 305.61(a)(1)(ii) or (iii) of this part may be determined, as appropriate, to have submitted adequate data or to have achieved substantial compliance with

one or more IV–D requirements, as defined in § 305.63 of this part, if the Secretary determines that the incompleteness or unreliability of the data, or the noncompliance with one or more of the IV–D requirements, is of a technical nature which does not adversely affect the performance of the State's IV–D program or does not adversely affect the determination of the level of the State's paternity establishment or other performance measures percentages.

§ 305.63 Standards for determining substantial compliance with IV–D requirements.

For the purposes of a determination under § 305.61(a)(1)(iii) of this part, in order to be found to be in substantial compliance with one or more of the IV–D requirements as a result of an audit conducted under § 305.60 of this part, a State must meet the standards set forth below for each specific IV–D State plan requirement or requirements being audited and contained in parts 302 and 303 of this chapter, measured as follows:

(a) The State must meet the requirements under the following areas:

(1) Statewide operations, § 302.10 of this chapter;

(2) Reports and maintenance of records, § 302.15(a) of this chapter;

(3) Separation of cash handling and accounting functions, § 302.20 of this chapter; and

(4) Notice of collection of assigned support, § 302.54 of this chapter.

(b) The State must provide services required under the following areas in at least 90 percent of the cases reviewed:

(1) Establishment of cases, § 303.2(a) of this chapter; and

(2) Case closure criteria, § 303.11 of this chapter.

(c) The State must provide services required under the following areas in at least 75 percent of the cases reviewed:

(1) Collection and distribution of support payments, including: collection and distribution of support payments by the IV–D agency under § 302.32(b) of this chapter; distribution of support collections under § 302.51 of this chapter; and distribution of support collected in title IV–E foster care maintenance cases under § 302.52 of this chapter;

(2) Establishment of paternity and support orders, including: Establishment of a case under § 303.2(b) of this chapter; services to individuals not receiving TANF or title IV–E foster care assistance, under § 302.33(a)(1) through (4) of this chapter; provision of services in interstate IV–D cases under § 303.7(a), (b) and (c)(1) through (6) and (c)(8) through (10) of this chapter; location of non-custodial parents under § 303.3 of this chapter; establishment of paternity under § 303.5(a) and (f) of this chapter; guidelines for setting child support awards under § 302.56 of this chapter; and establishment of support obligations under § 303.4(d), (e) and (f) of this chapter;

(3) Enforcement of support obligations, including, in all appropriate cases: establishment of a case under § 303.2(b) of this chapter; services to individuals not receiving TANF or title IV–E foster care assistance, under § 302.33(a)(1) through (4) of this chapter; provision of services in interstate IV–D cases under § 303.7(a), (b) and (c)(1) through (6) and (c)(8) through (10) of this chapter; location of non-custodial parents under § 303.3 of this chapter; enforcement of support obligations under § 303.6 of this chapter and State laws enacted under section 466 of the Act, including submitting once a year all appropriate cases in accordance with § 303.6(c)(3) of this chapter to State and Federal income tax refund offset; and wage withholding under § 303.100 of this chapter. In cases in which wage withholding cannot be implemented or is not available and the non-custodial parent has been located, States must use or attempt to use at least one enforcement technique available under State law in addition to Federal and State tax refund offset, in accordance with State laws and procedures and applicable State guidelines developed under § 302.70(b) of this chapter;

(4) Review and adjustment of child support orders, including: Establishment of a case under § 303.2(b) of this chapter; services to individuals not receiving TANF or title IV–E foster care assistance, under § 302.33(a)(1) through (4) of this chapter; provision of services in interstate IV–D cases under § 303.7(a), (b) and (c)(1) through (6) and (c)(8) through (10) of this chapter; location of non-custodial parents under § 303.3 of this chapter; guidelines for setting child support awards under § 302.56 of this chapter; and review and adjustment of support obligations under § 303.8 of this chapter; and

(5) Medical support, including: establishment of a case under § 303.2(b) of this chapter; services to individuals not receiving TANF or title IV–E foster care assistance, under § 302.33(a)(1) through (4) of this chapter; provision of services in interstate IV–D cases under § 303.7(a), (b) and (c)(1) through (6) and (c)(8) through (10) of this chapter; location of non-custodial parents under § 303.3 of this chapter: securing medical support information under § 303.30 of this chapter; and securing and enforcing medical support obligations under § 303.31 of this chapter; and

(6) Disbursement of support payments in accordance with the timeframes in section 454B of the Act and § 302.32 of this chapter.

(d) With respect to the 75 percent standard in paragraph (b) of this section:

(1) Notwithstanding timeframes for establishment of cases in § 303.2(b) of this chapter; provision of services in interstate IV–D cases under § 303.7(a), (b) and (c)(4) through (6), (c)(8) and (9) of this chapter; location and support order establishment under § 303.3(b)(3) and (5), and § 303.4(d) of this chapter, if a support order needs to be established in a case and an order is established during the audit period in accordance with the State's guidelines for setting child support awards, the State will be considered to have taken appropriate action in that case for audit purposes.

(2) Notwithstanding timeframes for establishment of cases in § 303.2(b) of this chapter; provision of services in interstate IV–D cases under § 303.7(a), (b) and (c)(4) through (6), and (c)(8) and (9) of this chapter; and location and review and adjustment of support orders contained in § 303.3(b)(3) and (5), and § 303.8 of this chapter, if a particular case has been reviewed and meets the conditions for adjustment under State laws and procedures and § 303.8 of this chapter, and the order is adjusted, or a determination is made, as a result of a review, during the audit period, that an adjustment is not needed, in accordance with the State's guidelines for setting child support awards, the State will be considered to have taken appropriate action in that case for audit purposes.

(3) Notwithstanding timeframes for establishment of cases in § 303.2(b) of this chapter; provision of services in interstate IV–D cases under § 303.7 (a), (b) and (c) (4) through (6), and (c)(8) and (9) of this chapter; and location and wage withholding in § 303.3(b) (3) and (5), and § 303.100 of this chapter, if wage withholding is appropriate in a particular case and wage withholding is implemented and wages are withheld during the audit period, the State will be considered to have taken appropriate action in that case for audit purposes.

(4) Notwithstanding timeframes for establishment of cases in § 303.2(b) of this chapter; provision of services in interstate IV–D cases under § 303.7 (a), (b) and (c) (4) through (6), and (c)(8) and (9) of this chapter; and location and enforcement of support obligations in § 303.3(b) (3) and (5), and § 303.6 of this chapter, if wage withholding is not appropriate in a particular case, and the

State uses at least one enforcement technique available under State law, in addition to Federal and State income tax refund offset, which results in a collection received during the audit period, the State will be considered to have taken appropriate action in the case for audit purposes.

(e) The State must meet the requirements for expedited processes under § 303.101(b)(2)(i) and (iii), and (e) of this chapter.

§ 305.64 Audit procedures and State comments.

(a) Prior to the start of the actual audit, Federal auditors will hold an audit entrance conference with the IV–D agency. At that conference, the auditors will explain how the audit will be performed and make any necessary arrangements.

(b) At the conclusion of audit fieldwork, Federal auditors will afford the State IV–D agency an opportunity for an audit exit conference at which time preliminary audit findings will be discussed and the IV–D agency may present any additional matter it believes should be considered in the audit findings.

(c) After the exit conference, Federal auditors will prepare and send to the IV–D agency a copy of their interim report on the results of the audit. Within a specified timeframe from the date the report was sent by certified mail, the IV–D agency may submit written comments on any part of the report which the IV–D agency believes is in error. The auditors will note such comments and incorporate any response into the final audit report.

§ 305.65 State cooperation in audit.

(a) Each State shall make available to the Federal auditors such records or other supporting documentation (electronic and manual) as the audit staff may request, including records to support the data as submitted on the Federal statistical and financial reports that will be used to calculate the State's performance. The State shall also make available personnel associated with the State's IV–D program to provide information that the audit staff may find necessary in order to conduct or complete the audit.

(b) States must provide evidence to Office that their data are complete and reliable as defined in § 305.2 of this part.

(c) Failure to comply with the requirements of this section with respect to audits conducted to determine compliance with IV–D requirements under § 305.60 of this part, may necessitate a finding that the State has failed to comply with the particular criteria being audited.

§ 305.66 Notice, corrective action year, and imposition of penalty.

(a) If a State is found by the Secretary to be subject to a penalty as described in § 305.61 of this part, the OCSE will notify the State in writing of such finding.

(b) The notice will:

(1) Explain the deficiency or deficiencies which result in the State being subject to a penalty, indicate the amount of the potential penalty, and give reasons for the finding; and

(2) Specify that the penalty will be assessed in accordance with the provisions of 45 CFR 262.1(b) through (e) and 262.7 if the State is found to have failed to correct the deficiency or deficiencies cited in the notice during the automatic corrective action year (i.e., the succeeding fiscal year following the year with respect to which the deficiency occurred.)

(c) The penalty under § 305.61 of this part will be assessed if the Secretary determines that the State has not corrected the deficiency or deficiencies cited in the notice by the end of the corrective action year.

(d) Only one corrective action period is provided to a State with respect to a given deficiency where consecutive findings of noncompliance are made with respect to that deficiency. In the case of a State against which the penalty is assessed and which failed to correct the deficiency or deficiencies cited in the notice by the end of the corrective action year, the penalty will be effective for any quarter after the end of the corrective action year and ends for the first full quarter throughout which the State IV–D program is determined to have corrected the deficiency or deficiencies cited in the notice.

(e) A consecutive finding occurs only when the State does not meet the same criterion or criteria cited in the notice in paragraph (a) of this section.

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Federal Register

Wednesday,
December 27, 2000

Part VI

Department of Education

National Institute on Disability and Rehabilitation Research; Final Funding Priority for Fiscal Years 2001–2002 for Traumatic Brain Injury Data Collection Center and Inviting Applications for a New Disability and Rehabilitation Research Project for Fiscal Year 2001–2002; Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Notice of a Final Funding Priority for Fiscal Years 2001–2002 for a Traumatic Brain Injury Data Collection Center

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

SUMMARY: The Assistant Secretary for the Office of Special Education and Rehabilitative Services announces a final funding priority for a Traumatic Brain Injury Data Collection Center under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 2001–2002. The Assistant Secretary takes this action to focus research attention on areas of national need. We intend this priority to improve the rehabilitation services and outcomes for individuals with disabilities.

DATES: This priority is effective on January 26, 2001.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3414, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–4475. Internet: donna_nangle@ed.gov Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

The final priority refers to NIDRR's Long-Range Plan (the Plan). The Plan can be accessed on the World Wide Web at: *http://www.ed.gov/offices/OSERS/NIDRR/#LRP.*

National Education Goals

This final priority will address the National Education Goal that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Note: This notice does *not* solicit applications. A notice inviting applications is published in this issue of the **Federal Register**.

Analysis of Comments and Changes

On November 7, 2000, the Assistant Secretary published a notice of proposed priorities in the **Federal Register** (65 FR 66732). The Department of Education received no comments on the notice of proposed priorities by the deadline date.

Disability and Rehabilitation Research Projects and Centers Program

The authority for Disability and Rehabilitation Research Projects (DRRP) is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(g) and 764(b)(4)). The purpose of the DRRP program is to plan and conduct research, demonstration projects, training and related activities to—

(a) Develop methods, procedures, and rehabilitation technology that maximizes the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities; and

(b) Improve the effectiveness of services authorized under the Act.

Traumatic Brain Injury (TBI) Data Center

Background

An estimated 5.3 million Americans currently live with disabilities resulting from brain injury. The Centers for Disease Control (CDC) estimates that approximately 80,000 Americans experience the onset of disabilities resulting from TBI each year. The three leading causes of TBI are motor vehicle crashes, violence, and falls, particularly among the elderly. As stated in the 1998 National Institutes of Health (NIH) Consensus Conference, "TBI may result in lifelong impairment of an individual's physical, cognitive, and psychosocial functioning."

In 1987, NIDRR established the National Traumatic Brain Injury Model Systems (TBIMS) Program by funding four research and demonstration projects to conduct research on comprehensive, multidisciplinary rehabilitation services to persons who experience TBI. This number expanded to 17 projects in 1998. The multi-project TBIMS program is designed to study the course of recovery and outcomes following the delivery of a coordinated system of care. (Additional information on TBIMS can be found at http:\\www.tbims.org). The TBIMS database currently contains over 2,000 cases and supports clinical research and research on outcomes including employment, community integration, and quality of life. Through a complex data collection and retrieval program, the TBIMS projects are capable of analyzing different system components to provide information on project cost effectiveness and benefits. Data are collected throughout the rehabilitation process and at specified follow-up periods following discharge from the rehabilitation facility.

The parameters of the database are determined collaboratively by TBIMS project directors, in consultation with NIDRR. A syllabus describing the current data elements may be obtained from Donna Nangle listed under **FOR FURTHER INFORMATION CONTACT.** Expansion of the number of projects has broadened the representation of subjects in terms of geographic distribution, ethnic group membership, and socioeconomic status.

In the past, data from the TBIMS database have been largely restricted to the use of TBIMS researchers. Recent Federal regulations (see March 16, 2000, 65 FR 14416–14418) outline conditions under which outside parties may request access to the data under the auspices of the Freedom of Information Act. In addition, there is increased interest in expanding the use of these data in conjunction with population-based data to further research on TBI by the larger research community. Both activities require development of guidelines that ensure subject confidentiality, protect the identity of individual projects, and support use of the data in rigorous research efforts.

Historically, the data center has been funded as a supplement to one of the projects in the TBIMS. We propose to establish a separate TBI data center to maintain this information.

Absolute Priority

We will establish a data center for the purpose of managing and facilitating the use of information collected by the TBIMS projects on individuals with traumatic brain injury. The data center must:

(1) Establish and maintain a database repository for data from TBIMS projects while providing for confidentiality, quality control, and data retrieval capabilities, using cost-effective and user-friendly technology;

(2) Ensure data quality, reliability, and integrity by providing training and technical assistance to TBIMS projects on data collection procedures, data entry methods, and use of study instruments;

(3) Provide consultation to NIDRR and directors and staff of the TBIMS projects on utility and quality of data elements;

(4) Support efforts to improve the research findings of the TBIMS projects by providing statistical and other consultation regarding the national database;

(5) Facilitate dissemination of information generated by the TBIMS projects, including statistical

information, scientific papers, and consumer materials;

(6) Evaluate the feasibility of linking and comparing TBIMS data to population-based data sets, such as the CDC State-based injury surveillance data and provide technical assistance for such linkage, as appropriate; and

(7) Develop guidelines to provide access to TBIMS data by individuals and institutions, ensuring that data are available in accessible formats for persons with disabilities.

In carrying out these purposes, the center must:

- Demonstrate knowledge of culturally appropriate methods of data collection, including understanding of culturally sensitive measurement approaches; and
- Collaborate with other NIDRR funded projects, *e.g.*, the Model Spinal Cord Injury and Burn Injury Model System Data Centers, regarding issues such as database development and maintenance, center operations, and data management.

Additional Selection Criterion

We will use the selection criteria in 34 CFR 350.54 to evaluate applications under this program. The maximum score for all the criteria is 100 points; however, we will also use the following criterion so that up to an additional ten points may be earned by an applicant for a total possible score of 110 points.

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of those strategies, we will consider the applicant's prior success, as described in the application, in employing and advancing in employment qualified individuals with disabilities.

Thus, for purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for these priorities. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Applicable Program Regulations: 34 CFR part 350.

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(Catalog of Federal Domestic Assistance Numbers 84.133A, Disability Rehabilitation Research Project)

Program Authority: 29 U.S.C. 762(g) and 764(b)(4)).

Dated: December 20, 2000.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–32887 Filed 12–26–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133A]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for a New Disability and Rehabilitation Research Project for Fiscal Year 2001–2002

Purpose of the Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973. The Assistant Secretary takes this action to focus research attention on an area of national need. The priority is intended to improve rehabilitation services and outcomes for individuals with disabilities.

National Education Goals: This notice would address the National Education Goal that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The notice of a final funding priority for a Traumatic Brain Injury Data Collection Center is published elsewhere in this issue of the **Federal Register**.

Eligible Applicants: Parties eligible to apply for grants under this program are States, public or private agencies, including for-profit agencies, public or private organizations, including for-profit organizations, institutions of higher education, and Indian tribes and tribal organizations.

Deadline for Transmittal of Applications: February 8, 2001.

Applications Available: December 26, 2000.

Maximum Award Amount (Per Year): $350,000.

Note: Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year.

Reasonable Accommodation: We will consider, and may fund, requests for additional funding as an addendum to an application to reflect the costs of reasonable accommodations necessary to allow individuals with disabilities to be employed on the project as personnel on project activities.

Estimated Number of Awards: 1.

Note: The estimated funding level in this notice does not bind the Department of Education to make awards, or to any specific number of awards or funding levels, unless otherwise specified in statute.

Project Period: 60 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86, and the program regulations in 34 CFR part 350.

Selection Criteria: In evaluating an application for a new grant under this competition, we use selection criteria chosen from the selection criteria in 34 CFR 350.54 and 75.210, as well as the ten additional competitive preference points that have been announced in a notice published elsewhere in this issue of the **Federal Register**. The selection criteria to be used for this competition will be provided in the application package for this competition.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its Web site: http://www.ed.gov/pubs/edpubs.html or its E-mail address (edpubs@inet.ed.gov). If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.133A.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8351. If you use a telecommunications device for the deaf (TDD), you may call

the Federal Information Relay Services (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW, room 3414, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–4475.

Internet: Donna_Nangle@ed.gov.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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Dated: December 20, 2000.

Program Authority: 29 U.S.C. 762(g) and 764(b)(4).

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–32888 Filed 12–26–00; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Wednesday,
December 27, 2000

Part VII

Department of Education

Office of Elementary and Secondary Education: Safe and Drug-Free Schools and Communities National Programs; Combined Notice Inviting Applications for New Awards for Fiscal Year 2001; Notice

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.184H, 84.184K]

Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs—Combined Notice Inviting Applications for New Awards for Fiscal Year 2001

SUMMARY: The Secretary invites applications for new awards for fiscal year (FY) 2001 under two direct grant competitions supported by Safe and Drug-Free Schools and Communities Act (SDFSCA) National Programs: Grant Competition to Prevent High-Risk Drinking and Violent Behavior Among College Students (84.184H) and Middle School Drug Prevention and School Safety Program Coordinators Grant Competition (84.184K).

Purpose of Programs: The purpose of the Grant Competition to Prevent High-Risk Drinking and Violent Behavior Among College Students is to provide funds that support the development or enhancement, implementation, and evaluation of campus- and/or community-based prevention strategies to reduce high-risk drinking and/or violent behavior among college students. The purpose of the Middle School Drug Prevention and School Safety Program Coordinators Grant Competition is to provide funds that support recruiting, hiring, and training of one or more full-time staff to oversee the implementation of drug prevention and school safety programs for middle school students.

Applications Available: December 27, 2000.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86 (note: The regulations in 34 CFR part 86 apply to institutions of higher education only), 97, 98, and 99; and (b) the applicable notice of final priority and selection criteria for 84.184H as published elsewhere in this issue of the Federal Register and for 84.184K as published on April 6, 2000, at 65 FR 18200–18201], apply to these competitions. The applicable final priority and selection criteria will be available in the respective application package for each grant competition.

FOR APPLICATIONS AND FURTHER INFORMATION CONTACT: Safe and Drug-Free Schools Program, 400 Maryland Avenue, SW, 3E316, Washington, DC 20202-6123. Telephone: 202/260–3954. Fax: 202/260–7767. Internet: http://www.ed.gov/offices/OESE/SDFS.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 800/877–8339. Individuals with disabilities may obtain a copy of this document, or an application package, in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact listed under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT.** However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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Program Authority: 20 U.S.C. 7131.
Dated: December 21, 2000.

Michael Cohen,

Assistant Secretary forElementary and Secondary Education.

CFDA number and name	Estimated range of awards	Estimated average size of awards	Estimated number of awards	Estimated available funds	Project period	Deadline for transmittal of applications	Deadline for intergovernmental review	Eligible applicants
84.184H Grant Competition to Prevent High-Risk Drinking and Violent Behavior Among College Students.	$100,000 to $140,000.	$120,000	16	$2,000,000	Up to 24 months.	2/16/01	4/16/01	Institutions of higher education, consortia thereof, other public and private nonprofit organizations, or individuals.
84.184K Middle School Drug Prevention and School Safety Program Coordinators Grant Competition.	$145,000 to $275,000.	210,000	125	26,000,000	Up to 36 months.	2/23/01	4/24/01	Local educational agencies.

NOTE: Range of awards, average size of awards, number of awards, and available funding in this notice are estimates only. The Department is not bound by any estimates in this notice. Estimated available funds are for the first year of the project period only. Funding for the second (84.184H and 84.184K) and third years (84.184K only) of projects is subject both to the availability of future years' funds and the approval of continuation (see 34 CFR 75.253).

[FR Doc. 00–33006 Filed 12–26–00; 8:45 am]
BILLING CODE 4000–01–U

Federal Register

Wednesday,
December 27, 2000

Part VIII

Department of Education

Office of Elementary and Secondary Education: Safe and Drug-Free Schools and Communities National Programs; Combined Notice Inviting Applications for New Awards for Fiscal Year 2001; Notice

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs—Federal Activities—Grant Competition to Prevent High-Risk Drinking and Violent Behavior Among College Students

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of final priorities and selection criteria for fiscal year (FY) 2001 and subsequent years.

SUMMARY: The Assistant Secretary for the Office of Elementary and Secondary Education announces final priorities and selection criteria under the Safe and Drug-Free Schools and Communities National Programs-Federal Activities-Grant Competition to Prevent High-Risk Drinking and Violent Behavior Among College Students. The Assistant Secretary may use these priorities and selection criteria for competitions in fiscal year (FY) 2001 and later years.

EFFECTIVE DATE: These priorities and selection criteria are effective January 26, 2001.

FOR FURTHER INFORMATION CONTACT: Richard Lucey, Jr., U.S. Department of Education, 400 Maryland Avenue, SW—Room 3E252, Washington, DC 20202–6123. Telephone: (202) 205–5471. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at (800) 877–8339. Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Note: This notice does not solicit applications. In any year in which the Assistant Secretary chooses to use these final priorities and selection criteria, we invite applications through a notice in the **Federal Register**. A notice inviting applications under this competition is published elsewhere in this issue of the **Federal Register**.

SUPPLEMENTARY INFORMATION: The Assistant Secretary published a notice of proposed priorities and selection criteria for this competition in the **Federal Register** on October 16, 2000 (65 FR 61246–61247). Except for minor editorial revisions, there are no differences between the notice of proposed priorities and selection criteria and this notice of final priorities and selection criteria.

Analysis of Comments and Changes

In response to the Assistant Secretary's invitation in the notice of proposed priorities and selection criteria, nine parties submitted comments on the proposed priorities. An analysis of the comments follows, grouped by major issues according to subject. No changes have been made in response to the comments.

Generally, we do not address technical and other minor changes, and suggested changes the law does not authorize the Assistant Secretary to make under the applicable statutory authority.

Eligible Applicants

Comments: One party recommended that eligible applicants include statewide higher education coalitions.

Discussion: Eligible applicants under this grant competition include institutions of higher education, consortia thereof, other public and private nonprofit organizations, or individuals. Insofar as statewide higher education coalitions are nonprofit organizations, they would be eligible to apply for funding under this grant competition.

Changes: None.

Absolute Priorities

Comments: Six parties recommended that the word "or" be removed from the section within each of the two priorities that states "campus- and/or community-based strategies."

Discussion: The priority language is broad enough to include a wide range of prevention strategies that can originate either on the campus or within its surrounding community. The Assistant Secretary does not intend to exclude community representatives from campus-based efforts, nor exclude campus representatives from community-based efforts, to prevent high-risk drinking and violent behavior among college students. To the contrary, the selection criteria for this grant competition award points for proposed projects that will establish linkages with other appropriate agencies and organizations providing services to the target population.

Changes: None.

Focus of Funding

Comments: Two parties recommended that the Department's discretionary grant funding should focus on building regional or statewide coalitions.

Discussion: In Fiscal Year 1999, the Department conducted a State and Regional Coalition Grant Competition to Prevent High-Risk Drinking Among College Students. Although the current Grant Competition to Prevent High-Risk Drinking and Violent Behavior Among College Students does not have the express purpose of creating or sustaining coalitions, the Assistant Secretary does encourage collaboration among colleges and State and regional stakeholders in order to mobilize them into action and create systemic change. However, the Assistant Secretary has determined that this year's grant competition will focus on campus- and/or community-based efforts.

Changes: None.

General

In making awards under this grant program, the Assistant Secretary may take into consideration the geographic distribution of the projects in addition to the rank order of applicants.

Contingent upon the availability of funds, the Assistant Secretary may make additional awards in FY 2002 from the rank-ordered list of nonfunded applications from this competition.

Definitions

1. "*High-risk drinking*" is defined as those situations that may involve but not be limited to: Binge drinking (commonly defined as five or more drinks on any one occasion); underage drinking; drinking and driving; drinking in conjunction with situations when one's condition is already impaired by another cause, such as depression or emotional stress; or combining alcohol and medications, such as tranquilizers, sedatives, and antihistamines.

2. "*Specific student populations*" can include but not be limited to student athletes, members of fraternities and sororities, students attending two-year institutions of higher education, and first-year students.

Priorities

Under 34 CFR 75.105(c)(3) and the Safe and Drug-Free Schools and Communities Act of 1994, the Assistant Secretary gives an absolute preference to applications that meet either of the following priorities, and funds under this competition *only* those applications that meet either of the following absolute priorities:

Absolute Priority #1—Develop or Enhance, Implement, and Evaluate Campus- and/or Community-Based Strategies to Prevent High-Risk Drinking Among College Students

Under this priority, applicants are required to:

(1) Identify a specific student population to be served by the grant and provide a justification for its selection;

(2) Provide evidence that a needs assessment has been conducted on campus to document prevalence rates

related to high-risk drinking by the population selected;

(3) Set measurable goals and objectives for the proposed project and provide a description of how progress toward achieving goals will be measured annually;

(4) Design and implement prevention strategies, using student input and participation, that research has shown to be effective in preventing high-risk drinking by the target population;

(5) Use a qualified evaluator to design and implement an evaluation of the project using outcomes-based (summative) performance indicators related to behavioral change and process (formative) measures that assess and document the strategies used; and

(6) Demonstrate the ability to start the project within 60 days after receiving Federal funding in order to maximize the time available to show impact within the grant period.

Absolute Priority #2—Develop or Enhance, Implement, and Evaluate Campus- and/or Community-Based Strategies to Prevent High-Risk Drinking Among College Students

Under this priority, applicants are required to:

(1) Identify a specific student population to be served by the grant and provide a justification for its selection;

(2) Provide evidence that a needs assessment has been conducted on campus to document prevalence rates related to violent behavior;

(3) Set measurable goals and objectives for the proposed project and provide a description of how progress toward achieving goals will be measured annually;

(4) Design and implement prevention strategies, using student input and participation, that research has shown to be effective in preventing violent behavior among college students;

(5) Use a qualified evaluator to design and implement an evaluation of the project using outcomes-based (summative) performance indicators related to behavioral change and process (formative) measures that assess and document the strategies used; and

(6) Demonstrate the ability to start the project within 60 days after receiving Federal funding in order to maximize the time available to show impact within the grant period.

Selection Criteria

The Assistant Secretary uses the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion or factor under that criterion is indicated in parentheses.

(1) *Need for project.* (15 points)

In determining the need for the proposed project, the following factors are considered:

(a) The magnitude or severity of the problem to be addressed by the proposed project. (10 points)

(b) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses. (5 points)

(2) *Significance.* (20 points)

In determining the significance of the proposed project, the following factors are considered:

(a) The likelihood that the proposed project will result in system change or improvement. (5 points)

(b) The potential contribution of the proposed project to the development and advancement of theory, knowledge, and practices in the field of study. (10 points)

(c) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies. (5 points)

(3) *Quality of the project design.* (30 Points)

In determining the quality of the design of the proposed project, the following factors are considered:

(a) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (10 points)

(b) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (5 points)

(c) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice. (10 points)

(d) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population. (5 points)

(4) *Quality of project personnel.* (10 points)

In determining the quality of project personnel, the following factors are considered:

(a) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (3 points)

(b) The qualifications, including relevant training and experience, of key project personnel. (7 points)

(5) *Quality of the project evaluation.* (25 points)

In determining the quality of the evaluation, the following factors are considered:

(a) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (10 points)

(b) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (10 points)

(c) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (5 points)

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Applicable Program Regulations: The Education Department General Administrative Guidelines in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99.

Program Authority: 20 U.S.C. 7131.

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(Catalog of Federal Domestic Assistance Number 84.184H Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs—Federal Activities—Grant Competition to Prevent High-Risk Drinking and Violent Behavior Among College Students)

Dated: December 21, 2000.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 00–33007 Filed 12–26–00; 8:45 am]

BILLING CODE 4000–01–U

Federal Register

Wednesday,
December 27, 2000

Part IX

Office of Management and Budget

Standards for Defining Metropolitan and Micropolitan Statistical Areas; Notice

OFFICE OF MANAGEMENT AND BUDGET

Standards for Defining Metropolitan and Micropolitan Statistical Areas

AGENCY: Executive Office of the President, Office of Management and Budget (OMB), Office of Information and Regulatory Affairs.

ACTION: Notice of decision.

SUMMARY: This Notice announces OMB's adoption of Standards for Defining Metropolitan and Micropolitan Statistical Areas. These new standards replace and supersede the 1990 standards for defining Metropolitan Areas. In arriving at its decision, OMB accepted many of the recommendations of the interagency Metropolitan Area Standards Review Committee (the Review Committee) as published in the August 22, 2000 **Federal Register**. In response to public comment, and with the further advice of the Review Committee, OMB modified the recommended criteria for titling Combined Statistical Areas, identifying Principal Cities, and determining Metropolitan Divisions. The new standards appear at the end of this Notice in Section D.

The Supplementary Information in this Notice provides background information on the standards (Section A), a brief synopsis of the public comments OMB received in response to the August 22, 2000 **Federal Register** notice (Section B), and OMB's decisions on the final recommendations of the Review Committee (Section C).

The adoption of these new standards will not affect the availability of Federal data for geographic areas such as states, counties, county subdivisions, and municipalities. For the near term, the Census Bureau will tabulate and publish data from Census 2000 for all Metropolitan Areas in existence at the time of the census (that is, those areas defined as of April 1, 2000).

EFFECTIVE DATE: This Notice is effective immediately. OMB plans to announce definitions of areas based on the new standards and Census 2000 data in 2003. Federal agencies should begin to use the new area definitions to tabulate and publish statistics when the definitions are announced.

ADDRESSES: Please send correspondence about OMB's decision to Katherine K. Wallman, Chief Statistician, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10201 New Executive Office Building, 725 17th Street, NW., Washington, DC 20503; fax: (202) 395–7245.

Electronic Availability and Addresses: This **Federal Register** notice, and the three previous notices related to the review of the Metropolitan Area standards, are available electronically from the OMB web site: *http://www.whitehouse.gov/OMB/fedreg/index.html* and from the Census Bureau web site: *http://www.census.gov/population/www/estimates/masrp.html*. **Federal Register** notices also are available electronically from the U.S. Government Printing Office web site: *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

FOR FURTHER INFORMATION CONTACT: Suzann Evinger, Office of Information and Regulatory Affairs, Office of Management and Budget, (202) 395–7315; or E-mail: pop.frquestion@census.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The Metropolitan Area program has provided standard statistical area definitions for 50 years. In the 1940s, it became clear that the value of metropolitan data produced by Federal agencies would be greatly enhanced if agencies used a single set of geographic definitions for the Nation's largest centers of population and activity. Prior to that time, Federal agencies defined a variety of statistical geographic areas at the metropolitan level (including "metropolitan districts," "industrial areas," "labor market areas," and "metropolitan counties") using different criteria applied to different geographic units. Because of variations in methodologies and the resulting inconsistencies in area definitions, one agency's statistics were not directly comparable with another agency's statistics for any given area. OMB's predecessor, the Bureau of the Budget, led the effort to develop what were then called "Standard Metropolitan Areas" in time for their use in the 1950 census reports. Since then, comparable data products for Metropolitan Areas have been available. Because of the usefulness of the Metropolitan Area standards and data products, many have asked that the standards take into account more territory of the United States. Extending the standard to include the identification of Micropolitan Statistical Areas responds to those requests.

1. Concept and Uses

The general concept of a Metropolitan Statistical Area or a Micropolitan Statistical Area is that of an area containing a recognized population nucleus and adjacent communities that have a high degree of integration with that nucleus. The purpose of the Standards for Defining Metropolitan and Micropolitan Statistical Areas is to provide nationally consistent definitions for collecting, tabulating, and publishing Federal statistics for a set of geographic areas. To this end, the Metropolitan Area concept has been successful as a statistical representation of the social and economic linkages between urban cores and outlying, integrated areas. This success is evident in the continued use and application of Metropolitan Area definitions across broad areas of data collection, presentation, and analysis. This success also is evident in the use of statistics for Metropolitan Areas to inform the debate and development of public policies and in the use of Metropolitan Area definitions to implement and administer a variety of nonstatistical Federal programs. These last uses, however, raise concerns about the distinction between appropriate uses—collecting, tabulating, and publishing statistics as well as informing policy—and inappropriate uses—implementing nonstatistical programs and determining program eligibility. OMB establishes and maintains these areas solely for statistical purposes.

In order to preserve the integrity of its decision making with respect to reviewing and revising the standards for designating areas, OMB believes that it should not attempt to take into account or anticipate any public or private sector nonstatistical uses that may be made of the definitions. It cautions that Metropolitan Statistical Area and Micropolitan Statistical Area definitions should not be used to develop and implement Federal, state, and local nonstatistical programs and policies without full consideration of the effects of using these definitions for such purposes.

Metropolitan and Micropolitan Statistical Areas—collectively called Core Based Statistical Areas (CBSAs)—should not serve as a general purpose geographic framework for nonstatistical activities and may or may not be suitable for use in program funding formulas. The Metropolitan and Micropolitan Statistical Area Standards do not equate to an urban-rural classification; all counties included in Metropolitan and Micropolitan Statistical Areas and many other counties contain both urban and rural territory and populations. Programs that base funding levels or eligibility on whether a county is included in a Metropolitan or Micropolitan Statistical Area may not accurately address issues or problems faced by local populations,

organizations, institutions, or governmental units. For instance, programs that seek to strengthen rural economies by focusing solely on counties located outside Metropolitan Statistical Areas could ignore a predominantly rural county that is included in a Metropolitan Statistical Area because a high percentage of the county's residents commute to urban centers for work. Although the inclusion of such a county in a Metropolitan Statistical Area indicates the existence of economic ties, as measured by commuting, with the central counties of that Metropolitan Statistical Area, it may also indicate a need to provide programs that would strengthen the county's rural economy so that workers are not compelled to leave the county in search of jobs.

Program designs that treat all parts of a CBSA as if they were as urban as the densely settled core ignore the rural conditions that may exist in some parts of the area. Under such programs, schools, hospitals, businesses, and communities that are separated from the urban core by large distances or difficult terrain may experience the same kinds of challenges as their counterparts in rural portions of counties that are outside CBSAs. Although some programs do permit large Metropolitan Area counties to be split into "urban" and "rural" portions, smaller Metropolitan Area counties also can contain isolated rural communities.

Geographic information systems technology has progressed significantly over the past 10 years, making it practical for government agencies and organizations to assess needs and implement appropriate programs at a local geographic scale when appropriate. OMB urges agencies, organizations, and policy makers to review carefully the goals of nonstatistical programs and policies to ensure that appropriate geographic entities are used to determine eligibility for and the allocation of Federal funds.

2. Evolution and Review of the Metropolitan Area Standards

From the beginning of the Metropolitan Area program, OMB has reviewed the Metropolitan Area standards and, if warranted, revised them in the years preceding their application to new decennial census data. Periodic review of the standards is necessary to ensure their continued usefulness and relevance. Our current review of the Metropolitan Area standards—the Metropolitan Area Standards Review Project—has been the fifth such review. It has addressed, as a first priority, user concerns with the conceptual and operational complexity of the standards as they have evolved over the decades. Our three previous **Federal Register** notices have discussed this and other key concerns, as well as major milestones of the review.

In the fall of 1998, OMB chartered the Metropolitan Area Standards Review Committee (the Review Committee). We charged it with examining the 1990 Metropolitan Area standards in view of work completed earlier in the decade and providing recommendations for possible changes to those standards. The Review Committee included representatives from the Bureau of the Census (Chair), Bureau of Economic Analysis, Bureau of Labor Statistics, Bureau of Transportation Statistics, Economic Research Service (Agriculture), National Center for Health Statistics, and, *ex officio,* OMB. The Census Bureau provided research support to the Review Committee.

This is the fourth and final Notice pertaining to the Metropolitan Area Standards Review Project. OMB presented four alternative approaches to defining statistical areas in a December 21, 1998 **Federal Register** notice, "Alternative Approaches to Defining Metropolitan and Nonmetropolitan Areas" (63 FR 70526–70561). That Notice also included a discussion of the evolution of the standards for defining Metropolitan Areas as well as the standards that were used to define Metropolitan Areas during the 1990s.

OMB presented the Review Committee's initial recommendations in an October 20, 1999 **Federal Register** notice entitled, "Recommendations From the Metropolitan Area Standards Review Committee to the Office of Management and Budget Concerning Changes to the Standards for Defining Metropolitan Areas" (64 FR 56628–56644). OMB then published the Review Committee's final report and recommendations for revised standards in an August 22, 2000 **Federal Register** notice entitled "Final Report and Recommendations From the Metropolitan Area Standards Review Committee to the Office of Management and Budget Concerning Changes to the Standards for Defining Metropolitan Areas" (65 FR 51060–51077). The final recommendations presented in that Notice reflected some of the concerns raised in comments in response to the Review Committee's initial recommendations.

3. Future Directions

a. Statistical Area Research Projects

Our review of the Metropolitan Area standards over the past 10 years has raised a number of issues and suggested alternative approaches that warrant continued research and consideration. Ongoing research projects will improve understanding of the Nation's patterns of settlement and activity and how best to portray them. For example, Census Bureau staff are investigating the feasibility of developing a census tract level classification to identify settlement and land use categories along an urban-rural continuum. The Economic Research Service, in conjunction with the Office of Rural Health Policy in the Department of Health and Human Services and the University of Washington, has developed a nationwide census tract level rural-urban commuting area classification. This classification is available from the Economic Research Service web site: *http://www.ers.usda.gov:80/briefing/rural/ruca/rucc.htm.* These research efforts may lead to pilot projects at the Census Bureau or other agencies in the future.

b. Review of the Relationship Between Statistical Geographic Classifications and Other Federal Programs

The review of the Metropolitan Area standards also prompted comments about the use of Metropolitan and Micropolitan Statistical Area definitions in the design and administration of nonstatistical Federal programs and funding formulas. Although this relationship was not a criterion in reviewing the standards, the Review Committee and OMB recognize the existence and importance of this relationship. Comments received throughout the review indicated a need to distinguish more clearly between using Metropolitan and Micropolitan Statistical Areas to collect, tabulate, and publish statistics that measure economic and social conditions to inform public policy, and the use of the area definitions as a framework to determine eligibility or allocate funds for nonstatistical programs. Further, the Review Committee and OMB, as well as many commenters, recognize the need to begin a collaborative, interagency process that could result in the development of geographic area definitions that are appropriate for the administration of nonstatistical programs. Such a process could result in the identification of existing geographic area definitions and modifications to them that are already in use by agencies (for instance, there are at least six definitions of "urban" or "urban place" currently in use by Federal agencies), and in the development of guidelines that explain appropriate use of specific area definitions in various

circumstances. A longer-term goal of such an effort could be the development of one or more geographic area classifications designed specifically for use in the administration of nonstatistical Federal programs or of guidance for agencies that need to define geographic areas appropriate for use with specific programs.

B. Summary of Comments Received in Response to the August 22, 2000 Federal Register Notice

The August 22, 2000 **Federal Register** notice requested comment on the Review Committee's final recommendations to OMB concerning revisions to the standards for defining Metropolitan Areas.

OMB received 1,672 comment letters from individuals (1,483), municipalities and counties (88), regional planning and nongovernmental organizations (62), Members of Congress (25), state governments (13), and Federal agencies (1). Of the 1,672 letters, 1,314 offered comments regarding the Fort Worth, Texas area; all of these letters dealt with the identification of Metropolitan Divisions within the Dallas-Fort Worth-Arlington area and with the criteria for titling Combined Areas. OMB also heard concerns about the identification of Metropolitan Divisions and Combined Area titles from 141 other commenters from around the country.

Thirty-two commenters expressed concern about the potential effects of the proposed changes to the Metropolitan Area standards on nonstatistical Federal programs. Eight commenters were concerned about the effect on programs oriented toward rural areas, particularly if Micropolitan Areas were not treated as "rural" for purposes of Federal programs. Nine commenters expressed concern about the impact of the recommended standards on health-related programs. Several commenters suggested that OMB undertake research on the programmatic impact of the recommended standards. Others suggested that OMB state more strongly that it does not define Metropolitan and Micropolitan Areas for use in administering and determining participation in Federal nonstatistical programs.

Eight commenters addressed the Review Committee's recommendations about the qualification requirements for areas and central counties. Three commenters supported the Review Committee's recommendation that areas should qualify for CBSA status if a core of sufficient size—a Census Bureau defined urban cluster of at least 10,000 population or an urbanized area of at least 50,000 population—was present. Three commenters questioned the way in which the recommended standards would use urban clusters and urbanized areas as cores to qualify central counties, in particular when a core crosses county lines but the portion of the core in one county is not sufficient to qualify that county as central.

OMB received six comments about terminology in the proposed standards. Three commenters expressed support for the Review Committee's recommendation to retain the term "metropolitan" in reference to areas containing at least one core of 50,000 or more population. These commenters also expressed support for the use of the term "micropolitan" in reference to areas containing cores of at least 10,000 and less than 50,000 population. Several commenters expressed concern that the term "Core Based Statistical Area" would not be popular among users; only one commenter, however, supported dropping the term. One commenter favored using the terms "megapolitan" and "macropolitan" to distinguish between areas containing cores of at least one million and 50,000 population, respectively, as discussed in the October 20, 1999 **Federal Register** notice.

Twenty-six commenters remarked on the Review Committee's recommendations for identifying categories of CBSAs. Five commenters expressed support for the identification of two categories of CBSAs—metropolitan and micropolitan. Three commenters opposed identification of Micropolitan Areas because of the potential, but as yet unknown, impact such areas might have on the allocation of funds to Metropolitan Areas. One commenter expressed a similar concern without opposing the identification of Micropolitan Areas. Seven commenters favored the qualification of any county containing 100,000 or more population as a Metropolitan Area. Two commenters suggested that Combined Areas should be treated as CBSAs and that their component entities should be treated as Metropolitan Divisions.

Twelve commenters remarked on the Review Committee's recommendation to use the county as the geographic building block for CBSAs. Four commenters expressed support for the continued use of counties as building blocks. Three commenters expressed support for the use of minor civil divisions as building blocks for a primary set of statistical areas in New England. Five commenters expressed concern about the use of counties as building blocks, noting that some geographically large counties may contain populations that are not integrated with the CBSA to which the county qualifies. Several of these comments referred specifically to Douglas County, NV, which has commuting ties with the South Lake Tahoe area in the eastern end of El Dorado County, CA. Populations in the western end of El Dorado County, however, are more closely aligned with the Sacramento, CA area. When the recommended standards were applied to 1990 census data as a demonstration of the standards, the South Lake Tahoe area (El Dorado County, CA and Douglas County, NV) qualified to merge with the Sacramento area.

Forty-three commenters responded regarding the recommended criteria for qualifying outlying counties. Nearly all commenters supported the use of commuting data in determining the qualification of outlying counties. Thirteen of the commenters suggested that other measures should be used in addition to commuting. Six of these commenters suggested including a county in a Metropolitan Area if it is part of that area's metropolitan planning organization for transportation planning purposes. One commenter noted that commuting to work is a less relevant measure of interaction in areas that have high percentages of retirees. Three commenters suggested that commuting is too simplistic and is an insufficient measure of all social and economic interactions between areas. One commenter took issue with the specific wording of the decennial census questionnaire's place of work question, which was the basis of commuting data used to define Metropolitan and Micropolitan Areas under the standards recommended by the Review Committee. Nineteen commenters specifically responded regarding the commuting threshold used in qualifying outlying counties. Three commenters supported a 25 percent commuting threshold for outlying county qualification, as the Review Committee recommended; one commenter suggested reducing the threshold to less than 25 percent, and another specifically proposed a 20 percent threshold. Eleven commenters favored a 15 percent commuting threshold for outlying county qualification; these commenters generally drew attention to a particular county that did not qualify at the 25 percent level. Three commenters expressed general support for the Review Committee's recommendations but did not mention a specific commuting threshold.

OMB received 157 comments about the recommendations for merging and combining adjacent CBSAs. Nearly all commenters supported the recommendation to merge or combine

adjacent CBSAs when social and economic interaction between adjacent areas is evident. Two commenters suggested eliminating the identification of Combined Areas, arguing that the optional combination recommended by the Review Committee results in an inconsistent application of the Metropolitan and Micropolitan Area standards. Three commenters expressed concern that the criteria for combining adjacent CBSAs were too simplistic and by only measuring interactions between pairs of CBSAs did not account for more complex ties within large regions. One commenter suggested that OMB clarify the relationship between areas defined using the recommended standards (CBSAs, Combined Areas, and Metropolitan Divisions) and areas defined using the 1990 Metropolitan Area standards (Metropolitan Statistical Areas, Consolidated Metropolitan Statistical Areas, and Primary Metropolitan Statistical Areas). Two commenters suggested that Combined Areas should be treated as official Metropolitan or Micropolitan Areas. Eighty-nine commenters supported merging the Brownsville and McAllen areas to form a single Metropolitan Area, although these areas lacked sufficient commuting interchange to merge when the recommended standards were applied with 1990 census data. Twelve commenters expressed opposition to the potential combination of the Sarasota-Bradenton and Port Charlotte areas in Florida (which, according to the Review Committee's recommended standards applied to 1990 data, would combine only if local opinion in both areas favored doing so). Several of these commenters also noted that ties between the Port Charlotte area and the northern (Bradenton) portion of the Sarasota-Bradenton area were minimal. Eighteen commenters responded regarding the delineation of Combined Areas in North Carolina for Raleigh and Durham as well as for Greensboro-High Point, Burlington, and Eden-Reidsville. Of these, one commenter supported the Review Committee's recommendations based on the results of applying the recommended standards with 1990 census data; however, 17 expressed a preference to eliminate the five individual CBSAs that combine and instead recognize only the resultant combined entities.

Forty-seven commenters responded about the recommendations for identification of Principal Cities and the use of those cities in titling Metropolitan and Micropolitan Areas. Eighteen commenters expressed concern about the identification of census designated places as Principal Cities and the use of those places in titling Metropolitan and Micropolitan Areas. Seventeen of these commenters responded regarding the identification of specific census designated places as Principal Cities and the titling of their respective Metropolitan Areas. Eight commenters responded regarding aspects of the Principal City criteria that prevented some locally important cities from qualifying as Principal Cities and being included in their respective areas' titles. These commenters were concerned primarily with the requirement that Principal Cities with less than 250,000 population have a population at least one-third that of the largest place. One commenter suggested modifying the Principal City criteria to designate a larger number of places; this commenter also noted that doing so would reduce the need to use county names in the titles of Metropolitan Divisions. Eleven commenters responded regarding the titles of specific CBSAs in North Carolina; their comments on CBSA titles were related to their comments about the recommendations for merging and combining adjacent CBSAs. One commenter suggested that all cities of 500,000 or more population should be included in area titles.

OMB received 1,352 comments regarding the Review Committee's recommended criteria for identifying Metropolitan Divisions. Of these, 1,332 commenters expressed opposition to the Review Committee's recommendation, suggesting that the criteria were too strict and did not adequately identify all counties that could be considered "main counties." Most of these commenters expressed support for recognizing a specific county or set of counties as a Metropolitan Division within a larger Metropolitan Area; however, some did note that the maximum outcommuting threshold was too low and should be either raised or eliminated. Five commenters supported the Review Committee's recommendation. Three commenters from New Jersey opposed the recommendation, noting that, in their opinion, it resulted in too many Metropolitan Divisions in that state. These commenters suggested lowering the outcommuting threshold so as to reduce the number of counties that qualified as main counties. Two commenters suggested that the boundaries of current Primary Metropolitan Statistical Areas (PMSAs) should be maintained as Metropolitan Division boundaries or the criteria for defining Metropolitan Divisions should result in areas that are consistent with current PMSA boundaries. Four commenters expressed a desire for smaller groupings of counties than those represented by the Metropolitan Divisions that resulted from the application of the recommended standards with 1990 census data. One commenter expressed opposition to the identification of Metropolitan Divisions when doing so would split the component urban core between two or more divisions. In effect, the commenter opposed the Review Committee's recommendation to identify Metropolitan Divisions, since the reason for doing so was to recognize the complexity of social and economic interactions within large Metropolitan Areas that contain individual urban cores that extend across multiple counties.

OMB received 1,394 comments about the Review Committee's recommended criteria for titling Combined Areas. Most of these comments pertained to the recommendation to include in the title the name of the largest Principal City from each of up to three CBSAs that combine. These commenters generally expressed support for titling Combined Areas using the largest Principal Cities within the combination regardless of their CBSA locations. Some commenters expressed concern about the Review Committee's recommendation that the Combined Area title include an additional place name only if the CBSA in which that place is located has a population at least one-third the size of the largest CBSA in the combination. Regardless of the specific circumstances, nearly all commenters noted that a result of the Review Committee's recommendation was to exclude some socially and economically prominent Principal Cities from the titles of their Combined Areas.

Seven commenters responded regarding the Review Committee's recommendations for defining New England City and Town Areas (NECTAs), NECTA Divisions, and NECTA Combined Areas. All seven commenters supported the identification of areas in New England that used cities and towns as building blocks. Three commenters specifically supported the Review Committee's recommendations regarding the identification of NECTAs. Two commenters suggested that cities and towns should be the building blocks for a primary set of areas in New England and that counties should be used to define an alternative set of areas. One commenter expressed support for the designation of NECTAs as either metropolitan or micropolitan. Two

commenters suggested that NECTAs should be defined using criteria that are different from criteria used to define CBSAs in the rest of the country; one of these commenters suggested that other measures should be used in addition to commuting to determine the extent of areas in New England.

OMB has taken all of these comments into account, giving them careful consideration. As outlined below, we have adopted some of the suggested changes and modified criteria recommended by the Review Committee in August 2000. In a number of other cases, however, we have concluded that we could not adopt the suggestions made by commenters without undermining efforts to achieve a consistent, national approach designed to enhance the value of data produced by Federal agencies.

C. OMB's Decisions Regarding Recommendations From the Metropolitan Area Standards Review Committee Concerning Changes to the Standards for Defining Metropolitan Areas

This section of the Notice provides information on the decisions OMB has made on the Review Committee's recommendations. In arriving at these decisions, we took into account not only the public comment on the Review Committee's recommendations published in the **Federal Register** on August 22, 2000, but also the considerable amount of information provided during the 10 years of this review process, including public comments gathered from two conferences, a Congressional hearing, discussions attendant to numerous presentations to interested groups, and responses to two earlier OMB Notices (on December 21, 1998, and October 20, 1999). Our decisions benefitted greatly from the public participation that served as a reminder that, although identified for purposes of collecting, tabulating, and publishing Federal statistics, the Metropolitan and Micropolitan Statistical Areas defined through these standards represent areas in which people reside, work, and spend their lives and to which they attach a considerable amount of pride. Finally, in reaching our decisions, OMB benefitted substantially from the continuing deliberations of the Review Committee in response to the public comment as well as the research support provided by Census Bureau staff. We have relied upon and very much appreciate the expertise, insight, and dedication of Review Committee members and Census Bureau staff.

OMB presents below our decisions on the Review Committee's specific recommendations:

1. OMB accepted the Review Committee's recommendation to define Metropolitan Areas and Micropolitan Areas within a Core Based Statistical Area (CBSA) classification, but modified the title of the standards and the names of the categories to include the word "statistical," as indicated in Section 6 of the standards.

We considered two primary issues regarding the basis for categorizing CBSAs as either Metropolitan Statistical Areas or Micropolitan Statistical Areas. The first issue was whether to base categorization on the total CBSA population or on core population. OMB agrees with the Review Committee that since cores are the organizing entities of CBSAs, categorization should be based on the population in cores, reasoning that the range of services and functions provided within an area largely derive from the size of the core.

The second issue was whether to categorize areas based on the population of the most populous (or "dominant") core or on the total population of all (or "multiple") cores within a CBSA. OMB agrees with the Review Committee's recommendation that a single core of 50,000 or more population provides a wider variety of functions and services than does a group of smaller cores, even when such a group may have a collective population greater than 50,000. OMB was concerned that CBSAs categorized as Metropolitan Statistical Areas on the basis of the population in all cores would not bear the same kinds of characteristics as CBSAs categorized as Metropolitan Statistical Areas on the basis of a single core of 50,000 or more population. This decision also retains the current conceptual approach to defining Metropolitan Areas as based around concentrations of 50,000 or more population. The retention of this concept and the 50,000 population threshold will facilitate comparison of data for Metropolitan Statistical Areas over time.

OMB inserted the word "statistical" into the terms for categories of CBSAs and the title of the standards to make clearer the statistical purpose of these areas.

2. OMB accepted the Review Committee's recommendation to use counties and equivalent entities as the geographic building blocks for defining CBSAs throughout the United States and Puerto Rico, and to use cities and towns as the geographic building blocks for defining New England City and Town Areas (NECTAs).

Using counties and equivalent entities throughout the United States and Puerto Rico continues current practice, except in New England, where historically Metropolitan Areas have been defined using minor civil divisions. The choice of a geographic unit to serve as the building block can affect the geographic extent of a statistical area and its relevance or usefulness in describing economic and demographic patterns. The choice also has implications for the ability of Federal agencies to provide data for statistical areas and their components.

We believe it advantageous to use counties and their equivalents because they are available nationwide, have stable boundaries, and are familiar geographic entities. In addition, more Federal statistical programs produce data at the county level than at any subcounty level. OMB agrees with the Review Committee that the well-known disadvantages of using counties as building blocks for statistical areas—the large geographic size of some counties and resultant lack of geographic precision that follows from their use—are outweighed by the advantages offered by using counties.

We have reached our decision to use the county as the building block for CBSAs in New England, because we attach priority to the use of a consistent geographic unit nationwide. Use of a consistent geographic building block offers improved usability to producers and users of data; data for CBSAs in all parts of the country would be directly comparable. Some statistical programs, such as those providing nationwide economic data and population estimates, also have regarded the Metropolitan Area program's use of minor civil divisions in New England as a hindrance. They have sometimes used the currently available alternative county based areas for New England, known as the New England County Metropolitan Areas, or have minimized the number of data releases for Metropolitan Areas. Under the current Metropolitan Area program, data producers and users typically choose between (1) adhering to the preferred Metropolitan Statistical Areas, Consolidated Metropolitan Statistical Areas, and Primary Metropolitan Statistical Areas throughout the country and having data that limit comparisons between some areas, and (2) using alternative areas in New England and having more comparable data. OMB's decision eliminates the need for this choice.

Demographic and economic data for minor civil divisions in New England are more plentiful than similar data for

subcounty entities in the rest of the Nation. In recognition of the importance of minor civil divisions in New England, the wide availability of data for them, and their long-term use in the Metropolitan Area program, OMB also will use the minor civil division as the building block for a set of areas for the six New England states. These NECTAs are intended for use in the collection, tabulation, publication, and analysis of statistical data, whenever feasible and appropriate, for New England. Data providers and users desiring areas defined using a nationally consistent geographic building block should use the county based CBSAs in New England; however, counties are less well-known in New England than cities and towns.

3. OMB accepted the Review Committee's recommendation to use Census Bureau defined urbanized areas of 50,000 or more population and Census Bureau defined urban clusters of 10,000—49,999 population as the cores of CBSAs and to use the locations of these cores as the basis for identifying central counties of CBSAs. OMB also accepted the Review Committee's recommendation to identify central counties as those counties that (a) have at least 50 percent of their population in urban areas (urbanized areas or urban clusters) of at least 10,000 population or (b) have within their boundaries a population of at least 5,000 located in a single urban area (urbanized area or urban cluster) of at least 10,000 population.

In accepting the Review Committee's recommendation to use Census Bureau defined urbanized areas and urban clusters as the cores of Metropolitan Statistical Areas and Micropolitan Statistical Areas, OMB recognizes that urbanized areas and urban clusters are the organizing entities of CBSAs. The use of urbanized areas as cores is consistent with current practice. To extend the classification to areas based on cores of 10,000 to 49,999 population, OMB will use urban clusters as cores for Micropolitan Statistical Areas. Urban clusters will be identified by the Census Bureau following Census 2000 and will be conceptually similar to urbanized areas.

OMB agreed with the Review Committee that the location of these cores should be used to identify the central county or counties of each CBSA. The identification of central counties facilitates the use of county-to-county commuting data when determining whether additional counties qualify for inclusion in the CBSA.

4. OMB accepted the Review Committee's recommendation to use data on journey to work, or commuting, as the basis for grouping counties together to form CBSAs (i.e., to qualify "outlying counties"). OMB accepted the Review Committee's recommendation to qualify a county as an outlying county if (a) at least 25 percent of the employed residents of the county work in the CBSA's central county or counties, or (b) at least 25 percent of the jobs in the potential outlying county are accounted for by workers who reside in the CBSA's central county or counties. OMB also accepted the Review Committee's recommendation not to use measures of settlement structure, such as population density, to qualify outlying counties for inclusion in CBSAs.

Three priorities guided OMB in reaching this decision. We believe the data used to measure connections among counties should describe those connections in a straightforward and intuitive manner, be collected using consistent procedures nationwide, and be readily available to the public. These priorities steered us to the use of data gathered by Federal agencies and, more particularly, to commuting data from the Census Bureau. Commuting to work is an easily understood measure that reflects the social and economic integration of geographic areas. OMB agrees with the Review Committee that changes in settlement, commuting patterns, and communications technologies have made settlement structure unreliable as an indicator of metropolitan character. We agree that the percentage of a county's employed residents who commute to the central county or counties is an unambiguous, clear measure of whether a potential outlying county should qualify for inclusion. The percentage of employment in the potential outlying county accounted for by workers who reside in the central county or counties is similarly a straightforward measure of ties. Including both criteria addresses the conventional and the less common reverse commuting flows.

There have been changes in daily mobility patterns and increased interaction between communities as indicated by increases in inter-county commuting over the past 40 years. The percentage of workers in the United States who commute to places of work outside their counties of residence has increased from approximately 15 percent in 1960 (when nationwide commuting data first became available from the decennial census) to nearly 25 percent in 1990. OMB agrees with the Review Committee that raising the commuting percentage required for qualification of outlying counties from the 15 percent minimum of the 1990 standards to 25 percent is appropriate against this background of increased overall inter-county commuting coupled with the removal of all settlement structure requirements from the outlying county criteria. In other words, since out-of-county commuting has become more commonplace, a higher percentage of commuting is necessary to demonstrate ties comparable to those indicated by a lower commuting rate in 1960. Further, both the Review Committee and OMB considered the "multiplier effect" (a standard method used in economic analysis to determine the impact of new jobs on a local economy) that each commuter would have on the economy of the county in which he or she lives. The size of the multiplier effect varies depending on the size of a region's economy and employment base, but a multiplier of two or three generally is accepted by regional economists, regional scientists, and economic development analysts for most areas. Applying such a measure in the case of a county with the minimum 25 percent commuting requirement means that the incomes of at least half of the workers residing in the outlying county are connected either directly (through commuting to jobs located in the central county) or indirectly (by providing services to local residents whose jobs are in the central county) to the economy of the central county or counties of the CBSA within which the county at issue qualifies for inclusion.

5. OMB accepted the Review Committee's recommendation to merge contiguous CBSAs to form a single CBSA when the central county or counties of one area qualify as outlying to the central county or counties of another. OMB accepted the Review Committee's recommendation to use the same minimum commuting threshold—25 percent—as is used to qualify outlying counties.

In accepting the Review Committee's recommendation to merge contiguous CBSAs, OMB recognized that patterns of population distribution and commuting sometimes are complex and, as a result, close social and economic ties, as measured by commuting, exist between some contiguous CBSAs. OMB agreed with the Review Committee that strong ties between the central counties of two contiguous CBSAs, similar to the ties between an outlying county and a central county or counties, should be recognized by merging the two areas to form a single CBSA.

6. OMB accepted the Review Committee's recommendations to identify Principal Cities and to use them

to title areas, but modified the recommendation concerning the criteria used to identify Principal Cities as indicated in Section 5 of the standards.

OMB's modifications address two concerns: (1) ensuring that at least one incorporated place of 10,000 or more population (if one is present) is recognized as a Principal City, and (2) allowing a fuller identification of places that represent the more important social and economic centers within a Metropolitan or Micropolitan Statistical Area. In the first instance, we were concerned that an unincorporated place with a large population, but relatively small employment base, would qualify as the only Principal City of its CBSA. OMB noted some instances in which an incorporated place of at least 10,000 population accounted for a larger amount of employment than the most populous place, but lacked sufficient population to qualify as a Principal City. OMB's modification to recognize the largest incorporated place of at least 10,000 population as a Principal City will affect only a small number of areas nationwide in which the most populous incorporated place has less population than a larger unincorporated community.

We also were concerned that the recommended criteria were too restrictive and that many smaller, but locally important, cities would not be recognized as Principal Cities of their respective CBSAs. This was especially the case when the CBSA included one city that was significantly larger in population size than all other cities within the CBSA. OMB's modification will permit a fuller identification of places with at least 50,000 population as Principal Cities. This modification likely will result in the identification of approximately 100 additional Principal Cities, many of which currently are recognized as central cities of Metropolitan Areas.

7. OMB accepted the Review Committee's recommendation to identify Metropolitan Divisions and NECTA Divisions that function as distinct areas within Metropolitan Statistical Areas and NECTAs that contain at least one core of 2.5 million or more population. OMB modified the criteria used to define Metropolitan Divisions within Metropolitan Statistical Areas as well as NECTA Divisions within NECTAs, as indicated in Section 7 of the standards.

OMB's modifications to the Metropolitan Division criteria reflect two concerns. First, OMB was concerned that the Review Committee's recommended criteria for identifying the main counties of Metropolitan Divisions were too strict, particularly with regard to the requirement that a county have less than 15 percent commuting to any other county within the Metropolitan Statistical Area. The purpose of the main county criteria is to identify those counties within a Metropolitan Statistical Area that are self-contained economic centers. Such counties, because of the strength of their employment base, can form the basis for a separate division within the larger Metropolitan Statistical Area. The first two criteria for main counties recommended by the Review Committee—percent of resident workers employed within a particular county and the ratio of jobs to employed residents—provide indicators of the economic strength and relative independence of the county. OMB determined, however, after considering public comment and further discussion by the Review Committee, that the (third) outcommuting requirement was not a direct indicator of a county's economic strength or its identity as an organizing entity around which to form a Metropolitan Division. Therefore, we are eliminating the outcommuting criterion.

Second, upon further review of commuting patterns and related social and economic interactions within the ten Metropolitan Statistical Areas that contained cores of at least 2.5 million population in 1990, OMB discerned two kinds of counties. In the first category are those counties that are strongly self-contained. These are characterized by high percentages (65 percent or greater) of employed residents who remain in the county to work and by high ratios of jobs to resident workers (.75 or greater). These "main counties" stand alone as self-contained social and economic units within the larger Metropolitan Statistical Area or provide the social and economic center around which a group of counties is organized.

A second category of counties consists of those with high ratios of jobs to resident workers, but a lower percentage of employed residents working within the county (50 percent to 64.9 percent). These "secondary counties," while they can be identified as social and economic centers, also connect strongly with one or more adjacent counties through commuting ties. Such counties are only moderately self-contained and can provide the organizing basis for a Metropolitan Division only when paired with one or more counties of similar or greater economic strength. As such, they must combine with another secondary county or with a main county when forming the basis for a Metropolitan Division.

We also note that when combining secondary counties with other main or secondary counties and when qualifying additional outlying counties for inclusion in a Metropolitan Division, the employment interchange measure offers a more appropriate measure of interaction than determining ties based on the strength of commuting in one direction only. (The employment interchange measure is defined as the sum of the percentage of commuting from the entity with the smaller total population to the entity with the larger population and the percentage of employment in the entity with the smaller total population accounted for by workers residing in the entity with the larger total population.) Our decision to use the employment interchange measure is consistent with the reason for defining Metropolitan Divisions-that is, to recognize the complex social and economic interactions that occur within Metropolitan Statistical Areas that contain large urbanized areas. For the same reason, OMB modified the NECTA Division criteria to use the employment interchange measure, instead of the percentage of out-commuters, when qualifying additional outlying cities and towns for inclusion in a NECTA Division.

8. OMB accepted the Review Committee's recommendation to combine contiguous CBSAs when ties between those areas are less intense than those captured by mergers, but still significant. OMB accepted the Review Committee's recommendation to base combinations on the employment interchange measure between two CBSAs. OMB also accepted the Review Committee's recommendations that combinations of CBSAs, based on an employment interchange measure of at least 15 but less than 25, should occur only if local opinion (see Section C.10 below) in both areas is in favor and that combinations should occur automatically if the employment interchange measure between two CBSAs equals or exceeds 25. OMB added the word "statistical" to the term used to refer to areas resulting from the combination of CBSAs as indicated in Section 8 of the standards.

OMB agreed with the Review Committee that ties between contiguous CBSAs that are less intense than those captured by mergers (see Section C.5 above), but still significant, be recognized by combining those CBSAs. Because a combination thus defined represents a relationship of moderate strength between two CBSAs, OMB agrees with the Review Committee that the combining areas should retain their

identities as separate CBSAs within the combination.

OMB inserted the word "statistical" into the term used for combinations to make clearer the statistical purpose of these areas.

9. OMB accepted the Review Committee's recommendations to title (1) Metropolitan Divisions using the names of up to three Principal Cities, or up to three county names if no Principal Cities are present, in order of descending population size; and (2) NECTA Divisions using the names of up to three Principal Cities in order of descending population size, or the name of the largest minor civil division if no principal city is present. OMB modified the Review Committee's recommendations concerning titles of CBSAs, NECTAs, and Combined Statistical Areas, as indicated in Section 9 of the standards.

OMB's modification of the criteria for titling CBSAs addresses instances in which the largest Principal City is an unincorporated census designated place. Titles should provide a means of easily recognizing and locating CBSAs, and we are concerned that titles in which the first-named place is an unincorporated community might not be as recognizable nationally as those in which the first-named place is an incorporated place.

OMB's modification of the criteria for titling Combined Statistical Areas addresses three concerns: (1) The title of a Combined Statistical Area, to the extent possible, should reflect the geographic extent of the combination by including the names of Principal Cities contained within the areas that combine; (2) the title of a Combined Statistical Area, to the extent possible, should contain the names of the largest Principal Cities since these cities often are the social and economic centers for the broad region represented by the combination; and (3) the title of a Combined Statistical Area should not duplicate the title of any of the combining Metropolitan or Micropolitan Statistical Areas or Metropolitan Divisions.

10. OMB accepted the Review Committee's recommendation to apply only statistical rules when defining Metropolitan and Micropolitan Statistical Areas. OMB accepted the Review Committee's recommendation to allow the use of local opinion when contiguous CBSAs qualify to combine with an employment interchange measure of 15 to 24.9, but added one provision (Section 11b of the standards) that would allow for local opinion in titling Combined Statistical Areas.

Applying only statistical rules when defining areas minimizes ambiguity and maximizes the replicability and integrity of the process. Consideration of local opinion in specific circumstances, however, can provide room for accommodating some issues of local significance without impairing the integrity of the classification. OMB agrees with the Review Committee that when two contiguous CBSAs have an employment interchange measure of at least 15 and less than 25, the measured ties may be perceived as minimal by residents of the two areas. In these situations, local opinion is useful in determining whether to combine the two areas. OMB also agrees with the Review Committee that local opinion is useful in determining titles for Combined Statistical Areas that address the issues discussed in Section C.9 above.

11. OMB accepted the Review Committee's recommendation not to define types of settlement structure, such as urban, suburban, rural, and so forth, within the CBSA classification.

OMB recognizes that formal definitions of settlement types such as inner city, inner suburb, outer suburb, exurb, and rural would be of use to the Federal statistical system as well as to researchers, analysts, and other users of Federal data. Such settlement types, however, are not necessary for the delineation of statistical areas in this classification that describes the functional ties between geographic entities. These types would more appropriately fall within a separate classification that focuses exclusively on describing settlement patterns and land uses. We believe the Census Bureau and other interested Federal agencies should continue research on settlement patterns below the county level to describe further the distribution of population and economic activity throughout the Nation. In addition, OMB will consider initiating a collaborative, interagency process to foster improved understanding of geographic area classifications and to investigate the feasibility of developing alternative geographic area classifications that are appropriate for purposes such as the administration of nonstatistical programs.

12. OMB accepted the Review Committee's recommendation that the definitions of current Metropolitan Areas should not be automatically retained (i.e., "grandfathered") in the implementation of the "Standards for Defining Metropolitan and Micropolitan Statistical Areas."

In this context, "grandfathering" refers to the continued designation of an area even though it does not meet the standards currently in effect. The 1990 standards permitted changes in the definitions, or extent, of individual Metropolitan Areas through the addition or deletion of counties on the basis of each decennial census, but those standards did not permit the disqualification of Metropolitan Areas that previously qualified on the basis of a Census Bureau population count. To maintain the integrity of the classification, OMB favors the objective application of the new standards rather than continuing to recognize areas that do not meet the standards. The current status of a county as being within or outside a Metropolitan Area will play no role in the application of the Standards for Defining Metropolitan and Micropolitan Statistical Areas.

13. OMB accepted the Review Committee's recommendation to define new CBSAs between decennial censuses on the basis of Census Bureau population estimates or special census counts and to update the definitions of all existing CBSAs in 2008 using commuting data from the Census Bureau's American Community Survey.

The frequency with which new CBSAs are designated and existing areas updated has been of considerable interest to data producers and users throughout the Metropolitan Area Standards Review Project. The first areas to be designated by OMB using the Metropolitan and Micropolitan Statistical Area Standards and Census 2000 data will be announced in 2003. The sources and future availability of data for updating these areas figured prominently in the Review Committee's discussions and OMB's decisions. The availability of population totals and commuting data affects the ability to identify new CBSAs, reclassify existing areas among categories, and update the extent of existing areas. OMB agreed with the Review Committee that existing CBSAs should be updated every five years, and agreed that the availability of commuting data for all counties from the Census Bureau's American Community Survey in 2008 offered the possibility of updating the definitions of all existing CBSAs at that time.

Our decisions as discussed above are reflected in the text of the official Standards for Defining Metropolitan and Micropolitan Statistical Areas that we are issuing today. The following section presents these standards.

D. Standards for Defining Metropolitan and Micropolitan Statistical Areas

The Office of Management and Budget will use these standards to define Core

Based Statistical Areas (CBSAs) beginning in 2003. A CBSA is a geographic entity associated with at least one core of 10,000 or more population, plus adjacent territory that has a high degree of social and economic integration with the core as measured by commuting ties. The standards designate and define two categories of CBSAs: Metropolitan Statistical Areas and Micropolitan Statistical Areas.

The purpose of the Metropolitan and Micropolitan Statistical Area Standards is to provide nationally consistent definitions for collecting, tabulating, and publishing Federal statistics for a set of geographic areas. The Office of Management and Budget establishes and maintains these areas solely for statistical purposes.

Metropolitan and Micropolitan Statistical Areas are not designed as a general purpose geographic framework for nonstatistical activities or for use in program funding formulas. The CBSA classification does not equate to an urban-rural classification; Metropolitan and Micropolitan Statistical Areas and many counties outside CBSAs contain both urban and rural populations.

CBSAs consist of counties and equivalent entities throughout the United States and Puerto Rico. In view of the importance of cities and towns in New England, a set of geographic areas similar in concept to the county based CBSAs also will be defined for that region using cities and towns. These New England City and Town Areas (NECTAs) are intended for use with statistical data, whenever feasible and appropriate, for New England. Data providers and users desiring areas defined using a nationally consistent geographic building block should use the county based CBSAs in New England.

The following criteria apply to both the nationwide county based CBSAs and to NECTAs, with the exceptions of Sections 6, 7, and 9, in which separate criteria are applied when identifying and titling divisions within NECTAs that contain at least one core of 2.5 million or more population. Wherever the word "county" or "counties" appears in the following criteria (except in Sections 6, 7, and 9), the words "city and town" or "cities and towns" should be substituted, as appropriate, when defining NECTAs.

Section 1. Population Size Requirements for Qualification of Core Based Statistical Areas

Each CBSA must have a Census Bureau defined urbanized area of at least 50,000 population or a Census Bureau defined urban cluster of at least 10,000 population. (Urbanized areas and urban clusters are collectively referred to as "urban areas.")

Section 2. Central Counties

The central county or counties of a CBSA are those counties that:

(a) have at least 50 percent of their population in urban areas of at least 10,000 population; or

(b) have within their boundaries a population of at least 5,000 located in a single urban area of at least 10,000 population.

A central county is associated with the urbanized area or urban cluster that accounts for the largest portion of the county's population. The central counties associated with a particular urbanized area or urban cluster are grouped to form a single cluster of central counties for purposes of measuring commuting to and from potentially qualifying outlying counties.

Section 3. Outlying Counties

A county qualifies as an outlying county of a CBSA if it meets the following commuting requirements:

(a) at least 25 percent of the employed residents of the county work in the central county or counties of the CBSA; or

(b) at least 25 percent of the employment in the county is accounted for by workers who reside in the central county or counties of the CBSA.

A county may appear in only one CBSA. If a county qualifies as a central county of one CBSA and as outlying in another, it falls within the CBSA in which it is a central county. A county that qualifies as outlying to multiple CBSAs falls within the CBSA with which it has the strongest commuting tie, as measured by either (a) or (b) above. The counties included in a CBSA must be contiguous; if a county is not contiguous with other counties in the CBSA, it will not fall within the CBSA.

Section 4. Merging of Adjacent Core Based Statistical Areas

Two adjacent CBSAs will merge to form one CBSA if the central county or counties (as a group) of one CBSA qualify as outlying to the central county or counties (as a group) of the other CBSA using the measures and thresholds stated in 3(a) and 3(b) above.

Section 5. Identification of Principal Cities

The Principal City (or Cities) of a CBSA will include:

(a) the largest incorporated place with a Census 2000 population of at least 10,000 in the CBSA or, if no incorporated place of at least 10,000 population is present in the CBSA, the largest incorporated place or census designated place in the CBSA; and

(b) any additional incorporated place or census designated place with a Census 2000 population of at least 250,000 or in which 100,000 or more persons work; and

(c) any additional incorporated place or census designated place with a Census 2000 population of at least 50,000, but less than 250,000, and in which the number of jobs meets or exceeds the number of employed residents; and

(d) any additional incorporated place or census designated place with a Census 2000 population of at least 10,000, but less than 50,000, and one-third the population size of the largest place, and in which the number of jobs meets or exceeds the number of employed residents.

Section 6. Categories and Terminology

A CBSA receives a category based on the population of the largest urban area (urbanized area or urban cluster) within the CBSA. Categories of CBSAs are: Metropolitan Statistical Areas, based on urbanized areas of 50,000 or more population, and Micropolitan Statistical Areas, based on urban clusters of at least 10,000 population but less than 50,000 population.

Counties that do not fall within CBSAs will represent "Outside Core Based Statistical Areas."

A NECTA receives a category in a manner similar to a CBSA and is referred to as a Metropolitan NECTA or a Micropolitan NECTA.

Section 7. Divisions of Metropolitan Statistical Areas and New England City and Town Areas

(a) A Metropolitan Statistical Area containing a single core with a population of at least 2.5 million may be subdivided to form smaller groupings of counties referred to as Metropolitan Divisions.

A county qualifies as a "main county" of a Metropolitan Division if 65 percent or more of its employed residents work within the county and the ratio of the number of jobs located in the county to the number of employed residents of the county is at least .75.

A county qualifies as a "secondary county" if 50 percent or more, but less than 65 percent, of its employed residents work within the county and the ratio of the number of jobs located in the county to the number of employed residents of the county is at least .75.

A main county automatically serves as the basis for a Metropolitan Division. For a secondary county to qualify as the basis for forming a Metropolitan Division, it must join with either a contiguous secondary county or a contiguous main county with which it has the highest employment interchange measure of 15 or more.

After all main counties and secondary counties are identified and grouped (if appropriate), each additional county that already has qualified for inclusion in the Metropolitan Statistical Area falls within the Metropolitan Division associated with the main/secondary county or counties with which the county at issue has the highest employment interchange measure. Counties in a Metropolitan Division must be contiguous.

(b) A NECTA containing a single core with a population of at least 2.5 million may be subdivided to form smaller groupings of cities and towns referred to as NECTA Divisions.

A city or town will be a "main city or town" of a NECTA Division if it has a population of 50,000 or more and its highest rate of out-commuting to any other city or town is less than 20 percent.

After all main cities and towns have been identified, each remaining city and town in the NECTA will fall within the NECTA Division associated with the city or town with which the one at issue has the highest employment interchange measure.

Each NECTA Division must contain a total population of 100,000 or more. Cities and towns first assigned to areas with populations less than 100,000 will be assigned to the qualifying NECTA Division associated with the city or town with which the one at issue has the highest employment interchange measure. Cities and towns within a NECTA Division must be contiguous.

Section 8. Combining Adjacent Core Based Statistical Areas

(a) Any two adjacent CBSAs will form a Combined Statistical Area if the employment interchange measure between the two areas is at least 25.

(b) Adjacent CBSAs that have an employment interchange measure of at least 15 and less than 25 will combine if local opinion, as reported by the congressional delegations in both areas, favors combination.

(c) The CBSAs that combine retain separate identities within the larger Combined Statistical Areas.

Section 9. Titles of Core Based Statistical Areas, Metropolitan Divisions, New England City and Town Divisions, and Combined Statistical Areas

(a) The title of a CBSA will include the name of its Principal City with the largest Census 2000 population. If there are multiple Principal Cities, the names of the second largest and third largest Principal Cities will appear in the title in order of descending population size. If the Principal City with the largest Census 2000 population is a census designated place, the name of the largest incorporated place of at least 10,000 population that also is a Principal City will appear first in the title followed by the name of the census designated place.

(b) The title of a Metropolitan Division will include the name of the Principal City with the largest Census 2000 population located in the Metropolitan Division. If there are multiple Principal Cities, the names of the second largest and third largest Principal Cities will appear in the title in order of descending population size. If there are no Principal Cities located in the Metropolitan Division, the title of the Metropolitan Division will use the names of up to three counties in order of descending population size.

(c) The title of a NECTA Division will include the name of the Principal City with the largest Census 2000 population located in the NECTA Division. If there are multiple Principal Cities, the names of the second largest and third largest Principal Cities will appear in the title in order of descending population size. If there are no Principal Cities located in the NECTA Division, the title of the NECTA Division will use the name of the city or town with the largest population.

(d) The title of a Combined Statistical Area will include the name of the largest Principal City in the combination, followed by the names of up to two additional Principal Cities in the combination in order of descending population size, or a suitable regional name, provided that the Combined Statistical Area title does not duplicate the title of a component Metropolitan or Micropolitan Statistical Area or Metropolitan Division. Local opinion will be considered when determining the titles of Combined Statistical Areas.

(e) Titles also will include the names of any state in which the area is located.

Section 10. Update Schedule

(a) The Office of Management and Budget will define CBSAs based on Census 2000 data in 2003.

(b) Each year thereafter, the Office of Management and Budget will designate new CBSAs if:

(1) A city that is outside any existing CBSA has a Census Bureau special census count of 10,000 or more population, or Census Bureau population estimates of 10,000 or more population for two consecutive years, or

(2) A Census Bureau special census results in the delineation of a new urban area (urbanized area or urban cluster) of 10,000 or more population that is outside of any existing CBSA.

(c) In the years 2004 through 2007, outlying counties of intercensally designated CBSAs will qualify, according to the criteria in Section 3 above, on the basis of Census 2000 commuting data.

(d) The Office of Management and Budget will review the definitions of all existing CBSAs in 2008 using commuting data from the Census Bureau's American Community Survey. The central counties of CBSAs identified on the basis of a Census 2000 population count, or on the basis of population estimates or a special census count in the case of intercensally defined areas, will constitute the central counties for purposes of the 2008 area definitions. New CBSAs will be designated in 2008 and 2009 on the basis of Census Bureau special census counts or population estimates as described above; outlying county qualification in these years will be based on 2008 commuting data from the American Community Survey.

Section 11. Local Opinion

Local opinion, as used in these standards, is the reflection of the views of the public and is obtained through the appropriate congressional delegations. The Office of Management and Budget will seek local opinion in two circumstances:

(a) When two adjacent CBSAs qualify for combination based on an employment interchange measure of at least 15 but less than 25 (see Section 8). The two CBSAs will combine only if there is evidence that local opinion in both areas favors the combination.

(b) To determine the title of a Combined Statistical Area.

After decisions have been made regarding the combinations of CBSAs and the titles of Combined Statistical Areas, the Office of Management and Budget will not request local opinion again on these issues until the next redefinition of CBSAs.

Section 12. Definitions of Key Terms

Census designated place.—A statistical geographic entity that is

equivalent to an incorporated place, defined for the decennial census, consisting of a locally recognized, unincorporated concentration of population that is identified by name.

Central county.—The county or counties of a Core Based Statistical Area containing a substantial portion of an urbanized area or urban cluster or both, and to and from which commuting is measured to determine qualification of outlying counties.

Combined Statistical Area.—A geographic entity consisting of two or more adjacent Core Based Statistical Areas (CBSAs) with employment interchange measures of at least 15. Pairs of CBSAs with employment interchange measures of at least 25 combine automatically. Pairs of CBSAs with employment interchange measures of at least 15, but less than 25, may combine if local opinion in both areas favors combination.

Core.—A densely settled concentration of population, comprising either an urbanized area (of 50,000 or more population) or an urban cluster (of 10,000 to 49,999 population) defined by the Census Bureau, around which a Core Based Statistical Area is defined.

Core Based Statistical Area (CBSA).—A statistical geographic entity consisting of the county or counties associated with at least one core (urbanized area or urban cluster) of at least 10,000 population, plus adjacent counties having a high degree of social and economic integration with the core as measured through commuting ties with the counties containing the core. Metropolitan and Micropolitan Statistical Areas are the two categories of Core Based Statistical Areas.

Employment interchange measure.—A measure of ties between two adjacent entities. The employment interchange measure is the sum of the percentage of employed residents of the smaller entity who work in the larger entity and the percentage of employment in the smaller entity that is accounted for by workers who reside in the larger entity.

Geographic building block.—The geographic unit, such as a county, that constitutes the basic geographic component of a statistical area.

Main city or town.—A city or town that acts as an employment center within a New England City and Town Area that has a core with a population of at least 2.5 million. A main city or town serves as the basis for defining a New England City and Town Area Division.

Main county.—A county that acts as an employment center within a Core Based Statistical Area that has a core with a population of at least 2.5 million. A main county serves as the basis for defining a Metropolitan Division.

Metropolitan Division.—A county or group of counties within a Core Based Statistical Area that contains a core with a population of at least 2.5 million. A Metropolitan Division consists of one or more main/secondary counties that represent an employment center or centers, plus adjacent counties associated with the main county or counties through commuting ties.

Metropolitan Statistical Area.—A Core Based Statistical Area associated with at least one urbanized area that has a population of at least 50,000. The Metropolitan Statistical Area comprises the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured through commuting.

Micropolitan Statistical Area.—A Core Based Statistical Area associated with at least one urban cluster that has a population of at least 10,000, but less than 50,000. The Micropolitan Statistical Area comprises the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured through commuting.

New England City and Town Area (NECTA).—A statistical geographic entity that is defined using cities and towns as building blocks and that is conceptually similar to the Core Based Statistical Areas in New England (which are defined using counties as building blocks).

New England City and Town Area (NECTA) Division.—A city or town or group of cities and towns within a NECTA that contains a core with a population of at least 2.5 million. A NECTA Division consists of a main city or town that represents an employment center, plus adjacent cities and towns associated with the main city or town, or with other cities and towns that are in turn associated with the main city or town, through commuting ties.

Outlying county.—A county that qualifies for inclusion in a Core Based Statistical Area on the basis of commuting ties with the Core Based Statistical Area's central county or counties.

Outside Core Based Statistical Areas.—Counties that do not qualify for inclusion in a Core Based Statistical Area.

Principal City.—The largest city of a Core Based Statistical Area, plus additional cities that meet specified statistical criteria.

Secondary county.—A county that acts as an employment center in combination with a main county or another secondary county within a Core Based Statistical Area that has a core with a population of at least 2.5 million. A secondary county serves as the basis for defining a Metropolitan Division, but only when combined with a main county or another secondary county.

Urban area.—The generic term used by the Census Bureau to refer collectively to urbanized areas and urban clusters.

Urban cluster.—A statistical geographic entity to be defined by the Census Bureau for Census 2000, consisting of a central place(s) and adjacent densely settled territory that together contain at least 2,500 people, generally with an overall population density of at least 1,000 people per square mile. For purposes of defining Core Based Statistical Areas, only those urban clusters of 10,000 more population are considered.

Urbanized area.—A statistical geographic entity defined by the Census Bureau, consisting of a central place(s) and adjacent densely settled territory that together contain at least 50,000 people, generally with an overall population density of at least 1,000 people per square mile.

John T. Spotila,

Administrator, Office of Information and Regulatory Affairs.

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Federal Register

Vol. 65, No. 249

Wednesday, December 27, 2000

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FEDERAL REGISTER PAGES AND DATE, DECEMBER

75153–75580 1
75581–75852 4
75853–76114 5
76115–76560 6
76561–76914 7
76915–77244 8
77245–77494 11
77495–77754 12
77755–78074 13
78075–78402 14
78403–78894 15
78895–79304 18
79305–79710 19
79711–80278 20
80279–80732 21
80733–81320 22
81321–81726 26
81727–82238 27

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5030 (See EO 13178) 76913
5928 (See EO 13178) 76913
6425 (See Proc. 7383) 76551
7219 (See EO 13178) 76913
7350 (See Proc. 7388) 80723
7351 (See Proc. 7388) 80723
7382 ..... 75851, 76348
7383 76551
7384 76903
7385 77495
7386 78075
7387 80721
7388 80723
Executive Orders:
April 17, 1926 (Revoked in part by PLO 7470) 76663
11888 (See Proc. 7383) 76551
13089 (See EO 13178) 76913
13158 (See EO 13178) 76913
13177 76558
13178 76913
13179 77487
13180 77493
13181 81321
Administrative Orders:
Presidential Determinations:
No. 2001–04 78895

4 CFR

28 80279

5 CFR

213 78077
315 78077
531 75153
532 ..... 79305, 79306
1315 78403
1800 81325
1820 81325
1830 81325
1850 81325
Proposed Rules:
532 79320

7 CFR

2 77755
59 75464
205 80548
246 ..... 77245, 77769, 80280
723 78405
773 76115
774 76115
929 ..... 78079, 80733
984 78081
989 79307
1464 78405
1792 76915
1951 81325
Proposed Rules:
Ch. I 78994
15 76115
15b 76115
301 76582
319 75187
Ch. VIII 78994
930 77323
1000 ..... 76832, 77837
1001 ..... 76832, 77837
1005 ..... 76832, 77837
1006 ..... 76832, 77837
1007 ..... 76832, 77837
1030 ..... 76832, 77837
1032 ..... 76832, 77837
1033 ..... 76832, 77837
1124 ..... 76832, 77837
1126 ..... 76832, 77837
1131 ..... 76832, 77837
1135 ..... 76832, 77837

8 CFR

3 81334
212 80281
236 80281
240 81334
241 80281
Proposed Rules:
208 ..... 76121, 76588
214 79320

9 CFR

78 75581
93 ..... 78897, 81727
94 77771
Proposed Rules:
1 75635
381 75187
424 75187

10 CFR

30 79162
31 79162
32 ..... 79162, 80991
50 77773
72 ..... 75869, 76896, 79309
440 77210
Proposed Rules:
4 76480
72 ..... 75869, 76899
50 76178
430 75196
1040 76480

847.....79582
874.....79582
875.....79582
903.....79582
905.....79582
910.....79582
912.....79582
920.....78416
921.....79582
922.....79582
933.....79582
937.....79582
939.....79582
941.....79582
942.....79582
947.....79582
948.....80308

Proposed Rules:

Ch. II.....81465
203.....78431
256.....78432
938.....76954
948.....75889

31 CFR

Ch. V.....75629, 80749
1.....76009
29.....77500, 80752

32 CFR

668.....81357
706.....79741
818.....81740

Proposed Rules:

311.....75897

33 CFR

100.....76153, 77512, 77513
117.....76154, 76935
165.....81362, 81363, 81365

Proposed Rules:

97.....75201
117.....76956
165.....76195, 77839, 81471

34 CFR

373.....77432
606.....79309
607.....79309
608.....79309

36 CFR

800.....77698
1194.....80500

Proposed Rules:

7.....79024
18.....77538

37 CFR

1.....76756, 78958, 80755
201.....77292
253.....75167

Proposed Rules:

1.....80809
104.....80809
201.....77330, 78434

38 CFR

1.....76937, 81740
21.....80329

Proposed Rules:

18.....76460
36.....76957

39 CFR

20.....76154, 77076, 77302
111.....75167, 75863, 77515, 78538, 79311

Proposed Rules:

111.....75210
266.....81784, 81785

40 CFR

9.....76708, 80755
50.....80776
51.....81366
52.....76567, 76938, 77307, 77308, 78100, 78416, 78418, 78961, 78974, 79314, 79743, 79745, 79750, 79752, 80329, 80779, 80783, 81369, 81371, 81743
60.....75338, 76350, 76378, 78268
61.....78268
63.....76941, 78268, 80755
65.....78268
268.....81373
70.....78102, 79314, 80785
81.....77308
82.....78977
136.....81242
141.....76708
142.....76708
180.....75168, 75174, 76169, 76171, 78104, 79755, 79762, 80333, 80336, 80343, 80353
271.....79769, 80790, 81381
300.....75179, 76945
437.....81242
721.....81386
799.....78746

Proposed Rules:

2.....80394
7.....76460
52.....75215, 76197, 76958, 77695, 78434, 78439, 79034, 79037, 79040, 79789, 79790, 79791, 80397, 80814, 81786, 81799
55.....77333
60.....79046
63.....76460, 76958, 81134
70.....79791
81.....76303, 77544, 80397
86.....76797
94.....76797
97.....80398
261.....75637, 75897, 77429
268.....75651
271.....79794
300.....75215, 76965
420.....81964
799.....81658
1048.....76797
1051.....76797
1602.....81810

41 CFR

Proposed Rules:

101-6.....76460
101-8.....76460
102-117.....81405

42 CFR

Proposed Rules:

36.....75906
412.....81813
413.....81813
422.....81813
1001.....78124

43 CFR

6300.....78358
8560.....78358

Proposed Rules:

17.....76460
3000.....78440
3100.....78440
3110.....78440
3120.....78440
3130.....78440
3150.....78440
3195.....79325
3196.....79325
3200.....78440
3220.....78440
3240.....78440
3400.....78440
3470.....78440
3500.....78440
3510.....78440
3520.....78440
3530.....78440
3540.....78440
3550.....78440
3560.....78440
3570.....78440
3580.....78440
3590.....78440
3600.....78440
3610.....78440
3800.....78440
3800.....78440
3830.....78440
3850.....78440
3870.....78440

44 CFR

64.....75632, 78109
67.....80362, 80364

Proposed Rules:

7.....76460
67.....75908

45 CFR

270.....75633
276.....75633
302.....82176
303.....82154
304.....82176
305.....82176
308.....77742
1801.....81405
2525.....77820

Proposed Rules:

605.....76460
611.....76460
617.....76460
1110.....76460
1151.....76460
1156.....76460
1170.....76460
1203.....76460
1232.....76460

46 CFR

67.....76572
207.....77521
501.....81748
502.....81748

47 CFR

Ch. 1.....80367
1.....78989, 79773
20.....78990
36.....78990, 81759
54.....78990, 81759
73.....76947, 76948, 77318, 79317, 79318, 79773, 80367, 80790.
74.....79773
76.....76948
80.....77821
95.....77821

Proposed Rules:

0.....77545, 81816
1.....77545, 78455, 81474, 81816
13.....81475
20.....81475
21.....78455
22.....81475
24.....81475
26.....81475
27.....81475
43.....75656, 79795
54.....79047
61.....77545, 78455, 81816
63.....79795
69.....77545, 81816
73.....75221, 75222, 762096, 76207, 77338, 78455, 79048, 79049, 79327, 81816
74.....78455
76.....78455
80.....76966, 81475
87.....81475
90.....81475
95.....81475
97.....81475
101.....81475

48 CFR

Ch. 1 80266
9 80256
14 80256
15 80256
31 80256
52 80256
212 77827
215 77829
217 77831
219 77831
225 ..... 77827, 77832
236 77831
242 77832
250 77835
252 ..... 77827, 77832
Ch. 9 80994
1501 80791
1502 80791
1504 75863
1546 79781
1552 ..... 75863, 79781

Proposed Rules:

8 79702
51 79702
1842 76600
1852 76600

49 CFR

40 79462
195 ..... 75378, 80530
199 81409
219 79318
385 78422
386 78422
573 81409
578 81414
611 76864
1002 ..... 76174, 77319

Proposed Rules:

21 76460
27 76460
107 76890
195 76968
392 79050
393 79050
567 75222
571 ..... 75222, 77339, 78461
574 75222
575 75222

50 CFR

17 ..... 81182, 81419
20 76886
229 80368
230 75186
300 75866
600 77450
635 ..... 75867, 77523
648 ..... 76577, 76578, 77450, 77470, 78993, 81861
660 81766
679 ..... 76175, 76578, 77836, 78110, 78119, 80381

Proposed Rules:

17 ..... 76207, 77178, 79192, 80409, 80698, 82086
216 ..... 75230, 77546, 80815
224 79328
600 ..... 75911, 75912
622 80826
635 ..... 76601, 80410
648 ..... 75232, 75912
660 ..... 80411, 80827
679 ..... 78126, 78131
697 75916

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 27, 2000

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Horses from contagious equine meritis (CEM)-affected countries—
Florida; horses importation; published 12-27-00

CONSUMER PRODUCT SAFETY COMMISSION
Automatic residential garage door operators; safety standard; published 11-27-00

DEFENSE DEPARTMENT
Vocational rehabilitation and education:
Veterans education—
Educational assistance programs; new criteria for approving courses; published 12-27-00

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Federal-State Joint Board on Universal Service—
Non-rural carriers; new high-cost support mechanism; line count input values update; published 12-27-00

FEDERAL MARITIME COMMISSION
Organization, functions, and authority delegations:
Shipping Act of 1998; published 12-27-00

HEALTH AND HUMAN SERVICES DEPARTMENT
Children and Families Administration
Child support enforcement programs:
Incentative payments and audit penalties; published 12-27-00

TRANSPORTATION DEPARTMENT
Coast Guard
Pollution:
Non-petroleum oils, marine transportation-related facilities handling; response plans; published 6-30-00
Vocational rehabilitation and education:
Veterans education—
Educational assistance programs; new criteria for approving courses; published 12-27-00

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Lockheed; published 11-22-00
McDonnell Douglas; published 11-22-00
Saab; published 11-22-00
Airworthiness standards:
Special conditions—
Pratt & Whitney Canada, Inc., Model PT6T-9 turboshaft engine; published 12-27-00
Flight data recorder specifications; published 12-27-00
VOR Federal airways
Correction; published 12-27-00

VETERANS AFFAIRS DEPARTMENT
Vocational rehabilitation and education:
Veterans education—
Educational assistance programs; new criteria for approving courses; published 12-27-00

COMMENTS DUE NEXT WEEK

AGENCY FOR INTERNATIONAL DEVELOPMENT
Nondiscrimination on basis of race, color, national origin, handicap, and age in federally assisted programs or activities; comments due by 1-5-01; published 12-6-00

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Tomatoes grown in—
Florida; comments due by 1-5-01; published 11-6-00

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Rinderpest and foot-and-mouth disease—
KwaZulu-Natal, South Africa; comments due by 1-2-01; published 11-2-00
Plant-related quarantine, domestic:
Fire ant, imported; comments due by 1-5-01; published 11-6-00

AGRICULTURE DEPARTMENT
Farm Service Agency
Program regulations:
Off-farm migrant farmworker projects; operating assistance; comments due by 1-2-01; published 11-2-00

AGRICULTURE DEPARTMENT
Grain Inspection, Packers and Stockyards Administration
Grain inspection:
Commodities and rice; fees increase; comments due by 1-2-01; published 11-3-00

AGRICULTURE DEPARTMENT
Rural Business-Cooperative Service
Program regulations:
Off-farm migrant farmworker projects; operating assistance; comments due by 1-2-01; published 11-2-00

AGRICULTURE DEPARTMENT
Rural Housing Service
Program regulations:
Off-farm migrant farmworker projects; operating assistance; comments due by 1-2-01; published 11-2-00

AGRICULTURE DEPARTMENT
Rural Utilities Service
Program regulations:
Off-farm migrant farmworker projects; operating assistance; comments due by 1-2-01; published 11-2-00

AGRICULTURE DEPARTMENT
Nondiscrimination on basis of race, color, national origin, handicap, and age in federally assisted programs or activities; comments due by 1-5-01; published 12-6-00

COMMERCE DEPARTMENT
Nondiscrimination on basis of race, color, national origin, handicap, and age in federally assisted programs or activities; comments due by 1-5-01; published 12-6-00

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
Critical habitat designations—
Lower Columbia River coho salmon; comments due by 1-2-01; published 11-3-00
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic mackerel, squid, and butterfish; comments due by 1-4-01; published 12-5-00
Atlantic sea scallop; comments due by 1-2-01; published 12-1-00
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; comments due by 1-5-01; published 11-21-00

CONSUMER PRODUCT SAFETY COMMISSION
Practice and procedure:
Conduct standards for outside attorneys practicing before Commission; comments due by 1-5-01; published 11-6-00

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE
Nondiscrimination on basis of race, color, national origin, handicap, and age in federally assisted programs or activities; comments due by 1-5-01; published 12-6-00

DEFENSE DEPARTMENT
Acquisition regulations:
Electronic signatures; comments due by 1-2-01; published 11-1-00

EDUCATION DEPARTMENT
Grants:
Direct grant programs and disability and rehabilitation research projects and centers program; comments due by 1-2-01; published 11-3-00

ENERGY DEPARTMENT
Acquisition regulations:
Greening the Government Through Waste Prevention, Recycling, and

Airbus; comments due by 1-4-01; published 12-5-00

Boeing; comments due by 1-2-01; published 11-15-00

Bombardier; comments due by 1-3-01; published 12-4-00

British Aerospace; comments due by 1-4-01; published 12-5-00

Noise certification standards:

Helicopters; comments due by 1-3-01; published 10-5-00

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Reports and guidance documents; availability, etc.:

Transportation Recall Enhancement, Accountability, and Documentation (TREAD); insurance study; comments due by 1-5-01; published 12-11-00

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Alcohol; viticultural area designations:

Long Island, NY; comments due by 1-5-01; published 11-6-00

TREASURY DEPARTMENT

Comptroller of the Currency

National banks and District of Columbia banks; fees assessment; comments due by 1-2-01; published 12-1-00

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Defined contribution retirement plans; nondiscrimination requirements; comments due by 1-5-01; published 10-6-00

TREASURY DEPARTMENT

Thrift Supervision Office

Application processing; comments due by 1-2-01; published 11-2-00

Federal savings association bylaws; integrity of directors; comments due by 1-2-01; published 11-2-00

VETERANS AFFAIRS DEPARTMENT

Medical benefits:

Veterans' medical care or services; reasonable charges; comments due by 1-2-01; published 11-2-00

Nondiscrimination on basis of race, color, national origin, handicap, and age in federally assisted programs or activities; comments due by 1-5-01; published 12-6-00

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 4942/P.L. 106–553

Making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 2001, and for other purposes. (Dec. 21, 2000; 114 Stat. 2762)

H.R. 4577/P.L. 106–554

Consolidated Appropriations Act, 2001 (Dec. 21, 2000; 114 Stat. 2763)

H.R. 2903/P.L. 106–555

Striped Bass Conservation, Atlantic Coastal Fisheries Management, and Marine Mammal Rescue Assistance Act of 2000 (Dec. 21, 2000; 114 Stat. 2765)

H.R. 5210/P.L. 106–556

To designate the facility of the United States Postal Service located at 200 South George Street in York, Pennsylvania, as the "George Atlee Goodling Post Office Building". (Dec. 21, 2000; 114 Stat. 2771)

H.R. 5461/P.L. 106–557

Shark Finning Prohibition Act (Dec. 21, 2000; 114 Stat. 2772)

S. 439/P.L. 106–558

To amend the National Forest and Public Lands of Nevada Enhancement Act of 1988 to adjust the boundary of the Toiyabe National Forest, Nevada, and to amend chapter 55 of title 5, United States Code, to authorize equal overtime pay provisions for all Federal employees engaged in wildland fire suppression operations. (Dec. 21, 2000; 114 Stat. 2776)

S. 1508/P.L. 106–559

Indian Tribal Justice Technical and Legal Assistance Act of 2000 (Dec. 21, 2000; 114 Stat. 2778)

S. 1898/P.L. 106–560

Interstate Transportation of Dangerous Criminals Act of 2000 (Dec. 21, 2000; 114 Stat. 2784)

S. 3045/P.L. 106–561

Paul Coverdell National Forensic Sciences Improvement Act of 2000 (Dec. 21, 2000; 114 Stat. 2787)

Last List December 22, 2000

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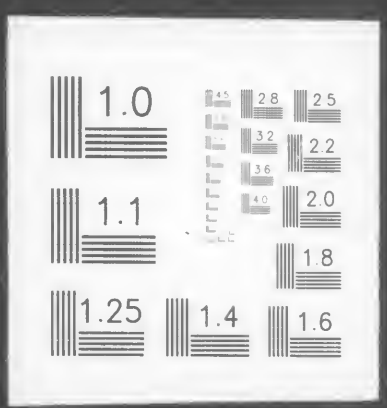
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