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Monday, December 23, 2002

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**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.

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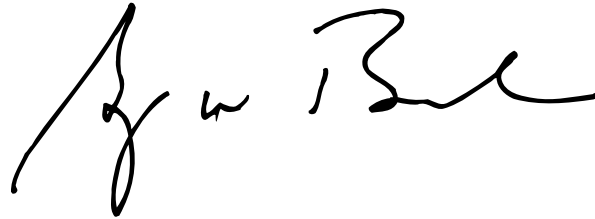
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Title 3—

**Presidential Determination No. 03–05 of December 7, 2002****The President****Presidential Determination of Designations Under the Iraq Liberation Act of 1998****Memorandum for the Secretary of State**

Pursuant to the authority vested in me as President of the United States, including under section 5 of the Iraq Liberation Act of 1998 (Public Law 105–338) (“the Act”), I hereby determine that each of the following groups is a democratic opposition organization and that each satisfies the criteria set forth in section 5(c) of the Act: the Assyrian Democratic Movement; the Iraqi Free Officers and Civilians Movement; the Iraqi National Front; the Iraqi National Movement; the Iraqi Turkmen Front; and the Islamic Accord of Iraq. I hereby designate each of these organizations as eligible to receive assistance under section 4 of the Act.

You are authorized and directed to report this determination and designation to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,  
*Washington, December 7, 2002.*

## Presidential Documents

Presidential Determination No. 03-06 of December 7, 2002

### Presidential Determination on Authorization to Furnish Drawdown Assistance to the Iraqi Opposition Under the Iraq Liberation Act of 1998

#### Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me as President of the United States, including under sections 4(a)(2) and 5(a) of the Iraq Liberation Act of 1998 (Public Law 105-338) (the "Act"), and consistent with Presidential Determination 99-13, I hereby direct the furnishing of up to \$92 million in defense articles from the Department of Defense, defense services from the Department of Defense, and military education and training in order to provide assistance to the following organizations:

Iraqi National Accord;

Iraqi National Congress;

Kurdistan Democratic Party;

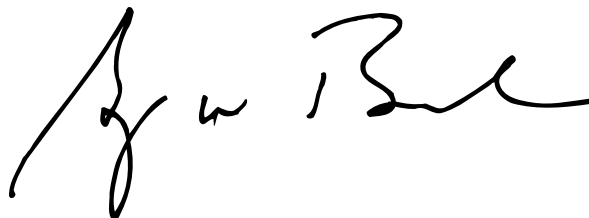
Movement for Constitutional Monarchy;

Patriotic Union of Kurdistan;

Supreme Council of the Islamic Revolution in Iraq;

and to such other Iraqi opposition groups designated by me under the Act before or after this determination. The assistance will be allocated in accordance with plans being developed by the Department of Defense and the Department of State.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,  
*Washington, December 7, 2002.*

## Presidential Documents

Presidential Determination No. 03-08 of December 13, 2002

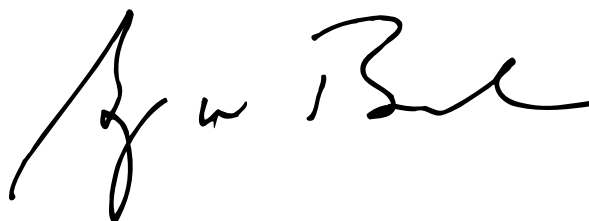
### Presidential Determination on Suspension of Limitations Under the Jerusalem Embassy Act

#### Memorandum for the Secretary of State

Pursuant to the authority vested in me as President by the Constitution and the laws of the United States, including section 7(a) of the Jerusalem Embassy Act of 1995 (Public Law 104-45) (the "Act"), I hereby determine that it is necessary to protect the national security interests of the United States to suspend for a period of 6 months the limitations set forth in sections 3(b) and 7(b) of the Act. My Administration remains committed to beginning the process of moving our embassy to Jerusalem.

You are hereby authorized and directed to transmit this determination to the Congress, accompanied by a report in accordance with section 7(a) of the Act, and to publish the determination in the **Federal Register**.

This suspension shall take effect after transmission of this determination and report to the Congress.



THE WHITE HOUSE,  
Washington, December 13, 2002



# Rules and Regulations

Federal Register

Vol. 67, No. 246

Monday, December 23, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 02-121-1]

#### Mexican Fruit Fly; Addition of Regulated Area

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the Mexican fruit fly regulations by designating a portion of Los Angeles County, CA as a regulated area and restricting the interstate movement of regulated articles from that area. This action is necessary to prevent the spread of the Mexican fruit fly into noninfested areas of the United States.

**DATES:** This interim rule was effective December 13, 2002. We will consider all comments that we receive on or before February 21, 2003.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02-121-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 02-121-1. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02-121-1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building,

14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen A. Knight, Senior Staff Officer, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-8247.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Mexican fruit fly (*Anastrepha ludens*) is a destructive pest of citrus and many other types of fruit. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas.

The Mexican fruit fly regulations, contained in 7 CFR 301.64 through 301.64-10 (referred to below as the regulations), were established to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. The regulations impose restrictions on the interstate movement of regulated articles from the regulated areas. Prior to the effective date of this rule, the only areas regulated for the Mexican fruit fly were portions of Texas.

Section 301.64-3 provides that the Deputy Administrator for Plant Protection and Quarantine (PPQ), Animal and Plant Health Inspection Service (APHIS), shall list as a regulated area each quarantined State, or each portion of a quarantined State, in which the Mexican fruit fly has been found by an inspector, in which the Deputy Administrator has reason to believe the Mexican fruit fly is present, or that the Deputy Administrator considers necessary to regulate because of its proximity to the Mexican fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Mexican fruit fly occurs.

Less than an entire quarantined State is designated as a regulated area only if the Deputy Administrator determines

that the State has adopted and is enforcing a quarantine or regulation that imposes restrictions on the intrastate movement of the regulated articles that are substantially the same as those that are imposed with respect to the interstate movement of the articles and the designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of the Mexican fruit fly.

Recent trapping surveys by inspectors of California State and county agencies and by APHIS inspectors reveal that a portion of Los Angeles County, CA, is infested with the Mexican fruit fly.

Accordingly, to prevent the spread of the Mexican fruit fly to noninfested areas of the United States, we are amending the regulations in § 301.64-10 by designating that portion of Los Angeles County, CA, as a regulated area for the Mexican fruit fly. The regulated area is described in detail in the rule portion of this document. The Deputy Administrator has determined that it is not necessary to designate the entire State of California as a regulated area.

##### Emergency Action

This rulemaking is necessary on an emergency basis to prevent the Mexican fruit fly from spreading to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

##### Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule restricts the interstate movement of regulated articles from an area in Los Angeles County, CA. Within

the regulated area there are approximately 389 small entities that may be affected by this rule. These include 351 fruit sellers, 3 growers, 33 nurseries, 1 certified farmers' market, and 1 swapmeet. These 389 entities comprise less than 1 percent of the total number of similar entities operating in the State of California. Additionally, these small entities sell regulated articles primarily for local intrastate, not interstate movement, so the effect, if any, of this regulation on these entities appears to be minimal.

The effect on those few entities that do move regulated articles interstate will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this interim rule. The site-specific environmental assessment provides a basis for the conclusion that the implementation of integrated pest management to eradicate the Mexican fruit fly will not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C.

4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this document). In addition, copies may be obtained from the individual listed under **FOR FURTHER INFORMATION CONTACT**.

#### Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

#### PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106-113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. In § 301.64–3, paragraph (c) is amended by adding, in alphabetical order, an entry for California to read as follows:

#### § 301.64–3 Regulated areas.

\* \* \* \* \*

(c) \* \* \*

#### California

*Los Angeles County.* That portion of the county in the Monterey Park area bounded by a line as follows: Beginning at the intersection of Valley Boulevard and Peck Road; then south along Peck Road to its intersection with Workman Mill Road; then southwest along Workman Mill Road to its intersection with Norwalk Boulevard; then southwest along Norwalk Boulevard to its intersection with Whittier Boulevard; then northwest along Whittier Boulevard to its

intersection with Passons Boulevard; then southwest along Passons Boulevard to its intersection with Washington Boulevard; then northwest along Washington Boulevard to its intersection with Paramount Boulevard; then southwest along Paramount Boulevard to its intersection with East Slauson Avenue; then west along East Slauson Avenue to its intersection with U.S. Interstate 710; then northwest along U.S. Interstate 710 to its intersection with U.S. Interstate 5; then northwest along U.S. Interstate 5 to its intersection with South Indiana Street; then north along South Indiana Street to its intersection with North Indiana Street; then north along North Indiana Street to its intersection with Cesar Chavez Avenue; then northwest along Cesar Chavez Avenue to its intersection with North Soto Street; then north along North Soto Street to its intersection with North Huntington Drive; then northeast along North Huntington Drive to its intersection with Del Mar Avenue; then south along Del Mar Avenue to its intersection with East Longden Drive; then east along East Longden Drive to its intersection with Longden Drive; then east along Longden Drive to its intersection with Encinita Avenue; then south along Encinita Avenue to its intersection with Las Tunas Drive; then east along Las Tunas Drive to its intersection with Temple City Boulevard; then south along Temple City Boulevard to its intersection with Olive Street; then east along Olive Street to its intersection with Baldwin Avenue; then south along Baldwin Avenue to its intersection with Lower Azusa Road; then east along Lower Azusa Road to its intersection with Arden Drive; then south along Arden Drive to its intersection with Valley Boulevard; then southeast along Valley Boulevard to the point of origin.

\* \* \* \* \*

Done in Washington, DC, this 13th day of December 2002 .

**Bobby R. Acord,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 02–32178 Filed 12–20–02; 8:45 am]

**BILLING CODE 3410–34–P**

#### DEPARTMENT OF AGRICULTURE

#### Rural Housing Service

#### Rural Business-Cooperative Service

#### Rural Utilities Service

#### Farm Service Agency

#### 7 CFR Parts 1980 and 4279

**RIN 0570–AA38**

#### Business and Industry Loans; Revision to Definition of Rural Area

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Rural Business-Cooperative Service (RBS) revises its regulations to amend the definition of rural area. This action is taken to comply with the amendment to section 343(a) of the Consolidated Farm and Rural Development Act. The intended effect of this action is to implement the revised definition of rural area for the Business and Industry Guaranteed and Direct Loan Programs mandated by section 6020 of the Farm Security and Rural Investment Act of 2002.

**EFFECTIVE DATE:** December 23, 2002.

**FOR FURTHER INFORMATION CONTACT:**

Brenda Griffin, Loan Specialist, Business and Industry Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3224, 1400 Independence Ave. SW., Washington, DC 20250, Telephone (202) 720-6802. The TDD number is (800) 877-8339 or (202) 708-9300.

**SUPPLEMENTARY INFORMATION:**

**Classification**

This rule has been determined to be non-significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

**Programs Affected**

The Catalog of Federal Domestic Assistance number for the program impacted by this action is 10.768, Business and Industry Loans.

**Paperwork Reduction Act**

There are no reporting and recordkeeping requirements associated with this rule.

**Intergovernmental Review**

The Business and Industry loan programs are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. RBS will conduct intergovernmental consultation in the manner delineated in RD Instruction 1940-J, "Intergovernmental Review of Rural Development Programs and Activities," and in 7 CFR part 3015, subpart V.

**Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, a regulatory flexibility analysis was not performed.

**Civil Justice Reform**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted, (2) no retroactive effect will be given to this rule, and (3) administrative proceedings in accordance with the regulations of the Agency at 7 CFR part 11 must be exhausted before bringing litigation challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

**Environmental Impact Statement**

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." RBS has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, an Environmental Impact Statement is not required.

**Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RBS 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 or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of UMRA generally requires RBS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**Executive Order 13132**

It has been determined under Executive Order 13132, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect

on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

**Background**

Section 6020 of the Farm Security and Rural Investment Act of 2002, Public Law 107-424, amended section 343(a) of the Consolidated Farm and Rural Development Act (Con Act) to change the definition of rural area for several programs under that Act, including the RBS Business and Industry loan programs. Section 343(a)(13) of the Con Act provides, in part, as follows:

(13) Rural and Rural Area.

(A) In General. Except as otherwise provided in this paragraph, the terms 'rural' and 'rural area' mean any area other than

(i) A city or town that has a population of greater than 50,000 inhabitants; and

(ii) The urbanized area contiguous and adjacent to such a city or town.

The revised definition in section 343(a)(13) of the Con Act supercedes the current definition for rural area used for the Business and Industry loan program. The current definition includes all territory of a State that is not within the outer boundary of any city having a population of 50,000 or more and its immediately adjacent urbanized and urbanizing area with a population density of more than 100 persons per square mile, as determined by the Secretary of Agriculture according to the latest decennial census of the United States. The new definition in section 343(a)(13) expands eligibility to include urbanizing areas; adds "town" to an area which can have a population of 50,000 or more; and deletes the requirement that the urbanized area be "immediately" adjacent to the city requiring only that it be "contiguous and adjacent" to the city or town. Cities or towns with populations greater than 50,000 inhabitants and the urbanized areas which are contiguous and adjacent to such cities and towns are ineligible for Business and Industry program loans.

This regulation is being published as a final rule without a Notice of Prior Rulemaking because the change being made is mandated by section 6020 which provides no administrative discretion in choosing the language to be used. Therefore, public comment is unnecessary and impracticable and contrary to the public interest. For this same reason, this final rule will be effective immediately upon publication.

**List of Subjects***7 CFR Part 1980*

Loan programs—Business and industry—Rural development assistance, Rural areas.

*7 CFR Part 4279*

Loan programs—Business and industry, Loan programs—Rural development assistance, Rural areas.

Accordingly, Chapters XVIII and XLII, Title 7, Code of Federal Regulations, are amended as follows:

Chapter XVIII—Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture

**PART 1980—GENERAL**

1. The authority citation for part 1980 is amended to read as follows:

**Authority:** 7 U.S.C. 1989.

**Subpart E—Business and Industrial Loan Program**

2. Section 1980.402 is amended by removing the definition of “Rural area.”

3. Section 1980.405 is revised to read as follows:

**§ 1980.405 Rural areas.**

The business financed with a B&I loan must be located in a rural area. Loans to borrowers with facilities located in both rural and non-rural areas will be limited to the amount necessary to finance the facility located in the eligible rural area. Cooperatives that are headquartered in a non-rural area may be eligible for a B&I loan if the loan is used for a project or venture that is located in a rural area. Rural areas are any areas other than:

(a) A city or town that has a population of greater than 50,000 inhabitants; and

(b) The urbanized area contiguous and adjacent to such a city or town, as defined by the U.S. Bureau of the Census using the latest decennial census of the United States.

Chapter XLII—Rural Business-Cooperative Service and Rural Utilities Service, Department of Agriculture

**PART 4279—GUARANTEED LOANMAKING**

4. The authority citation for part 4279 is amended to read as follows:

**Authority:** 7 U.S.C. 1989.

**Subpart B—Business and Industry Loans**

5. Section 4279.108 is amended by revising paragraph (c) to read as follows:

**§ 4279.108 Eligible borrowers.**

\* \* \* \* \*

(c) *Rural area.* The business financed with a B&I Guaranteed Loan must be located in a rural area. Loans to borrowers with facilities located in both rural and non-rural areas will be limited to the amount necessary to finance the facility located in the eligible rural area. Rural areas are any areas other than:

(1) A city or town that has a population of greater than 50,000 inhabitants; and

(2) The urbanized area contiguous and adjacent to such a city or town, as defined by the U.S. Bureau of the Census using the latest decennial census of the United States.

\* \* \* \* \*

Dated: December 6, 2002.

**Thomas C. Dorr,**

*Under Secretary, Rural Development.*

[FR Doc. 02-32241 Filed 12-20-02; 8:45 am]

BILLING CODE 3410-XY-P

**NUCLEAR REGULATORY COMMISSION****10 CFR Parts 51, 61, 70, 72, 73, 74, 75, 76, and 150**

**RIN 3150-AG69**

**Material Control and Accounting Amendments**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its material control and accounting (MC&A) regulations. The reporting requirements for submitting Material Balance Reports and Inventory Composition Reports are being revised to change both the frequency and timing of the reports for all licensees, except for Category I licensees. The reporting requirements for Category I facilities remain unchanged. The categorical exclusion for approving safeguards plans is being revised to specifically include approval of amendments to safeguards plans. The MC&A requirements for Category II facilities are being revised to be more risk-informed. The amendments are intended to reduce unnecessary burden on licensees and the NRC without adversely affecting public health and safety.

**EFFECTIVE DATES:** This final rule is effective on March 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** Merri Horn, telephone (301) 415-8126, e-mail [mlh1@nrc.gov](mailto:mlh1@nrc.gov), Office of Nuclear

Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

**SUPPLEMENTARY INFORMATION:****Background**

The Commission is amending its MC&A requirements to reduce unnecessary regulatory burden and to provide additional flexibility to licensees required to submit Material Balance Reports and Inventory Composition Reports (also called Physical Inventory Listing Reports). The current regulations require these reports to be compiled as of March 31 and September 30 of each year and submitted within 30 days after the end of the period covered by the report. These twice yearly reports are typically based on book values as opposed to physical inventory results because the dates do not always coincide with the time frame for a facility's physical inventory. Physical inventories for Category III facilities are conducted on an annual basis, semiannually for Category I facilities, and every 2 to 6 months for Category II facilities. The term “Material Status Reports” refers to both the Material Balance Report and the Inventory Composition Report and is used in part 75.

A Category I licensee is one that is licensed to possess and use formula quantities of strategic special nuclear material (SSNM) (e.g., 5 kilograms of uranium enriched to 20 percent or more in the uranium-235 isotope). SSNM means uranium-235 (contained in uranium enriched to 20 percent or more in the uranium-235 isotope), uranium-233, or plutonium. There are currently two licensed Category I facilities. A Category II licensee is one that is licensed to possess and use special nuclear material (SNM) of moderate strategic significance (e.g., 10 kilograms of uranium enriched to 10 percent or more but less than 20 percent in the uranium-235 isotope, with limited quantities at higher enrichments). Currently, there is only one licensed Category II facility, General Atomics, and it has a possession-only license and is undergoing decommissioning. General Atomics will not be required to make changes to meet the new requirements. A Category III licensee is one that is licensed to possess and use quantities of SNM of low strategic significance (e.g., uranium enriched to less than 10 percent in the uranium-235 isotope, with limited quantities at higher enrichments). See Table 1 for more specific information on limits for Category I, II, and III licensees.

TABLE 1.—CATEGORIZATION OF MATERIAL

Material	Form	Category I	Category II	Category III
Plutonium .....	Any .....	2 kg or more .....	Less than 2 kg but more than 500 g.	500 g or less.
Uranium-235 .....	Uranium enriched to 20 percent U-235 or more.	5 kg or more .....	Less than 5 kg but more than 1 kg.	1 kg or less.
	Uranium enriched to 10 percent U-235 but less than 20 percent.	.....	10 kg or more .....	Less than 10 kg.
	Uranium enriched above natural, but less than 10 percent U-235.	.....	.....	10 kg or more.
Uranium-233 .....	Any .....	2 kg or more .....	Less than 2 kg but more than 500 g.	500 g or less.

In 1982, the NRC initiated an effort to move the MC&A requirements from 10 CFR part 70, "Domestic Licensing of Special Nuclear Material," to 10 CFR part 74, "Material Control and Accounting of Special Nuclear Material." The initiative also included efforts to make the requirements more performance oriented. In 1985, the MC&A requirements for Category III facilities were made more performance oriented and moved to part 74 (50 FR 7575; February 25, 1985). The requirements for Category I facilities were similarly moved in 1987 (52 FR 10033; March 30, 1987). The MC&A requirements for Category II facilities and the general MC&A requirements are still interspersed among the safety and general licensing requirements of part 70. The requirements regarding Category II material are also overly prescriptive.

In addition, part 74 includes several typographical errors, old implementation dates, and some terminology that are being updated to reflect current practice.

Finally, the currently effective categorical exclusion for approval of safeguards plans does not clearly include the approval of an amendment to a safeguards plan.

#### Proposed Rule

The NRC published the proposed rule, "Material Control and Accounting Amendments" in the **Federal Register** on May 30, 2001 (66 FR 29251). The NRC received four comment letters on the proposed rule. These comments and the responses are discussed in the "Summary of Public Comments on the Proposed Rule" section.

#### Discussion

The NRC staff has considered whether this rulemaking should proceed at this time or be placed on hold until completion of the NRC staff's reevaluation of the safeguards and physical security programs. The NRC staff has concluded that this rulemaking

should go forward. This rulemaking clarifies the MC&A requirements by removing the inconsistencies between Category I, II, and III requirements. The rulemaking also results in a single location for all the MC&A requirements which will help both the NRC and stakeholders to locate those requirements that apply to a given facility.

#### Material Status Reports

A licensee authorized to possess SNM at any one time or location in a quantity totaling more than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, must complete and submit in a computer-readable format a Material Balance Report concerning SNM received, produced, possessed, transferred, consumed, disposed of, or lost. A Material Balance Report is a summary of nuclear material changes from one inventory period to the next. Currently, this report must be compiled as of March 31 and September 30 of each year and filed within 30 days after the end of the period. Under §§ 76.113, 76.115, and 76.117, the gaseous diffusion plants (certificate holders) are also required to submit the report twice yearly on the same schedule. (Note that the term "licensee", as it is used within this statement of considerations, includes the gaseous diffusion plants unless otherwise stated.) Each licensee is also required to file a statement of the composition of the ending inventory with the Material Balance Report. An Inventory Composition Report is a report of the actual inventory listed by specified forms of material (e.g., irradiated versus unirradiated fuel at power reactors). However, a licensee required to submit a Material Status Report under § 75.35 is directed to submit this report only in accordance with the provisions of that section (*i.e.*, at the time of a physical inventory). Section 75.35 applies only to those

facilities that have been selected to report under the Agreement Between the United States and the International Atomic Energy Agency (IAEA) for the Application of Safeguards in the United States. For those facilities reporting under part 75, the frequency of reporting is dependent on the frequency of the physical inventory, which is dependent on the Category of facility (*i.e.*, Category I, II, or III). The report would be required either once (Category III) or twice (Category I and II) per year.

The principal purpose of the Material Status Report is the periodic reconciliation of licensee records with the records in the Nuclear Materials Management and Safeguards System (NMMSS). The NMMSS is the national database for tracking source and SNM. The database is maintained under a Department of Energy contract. The data from the NMMSS are then used to satisfy the requirement of the US/IAEA Safeguards Agreement to provide the annual Material Balance Report for facilities selected under the Agreement or associated Protocol.

The proposed rule would have modified the regulations to require the Material Balance Report and the Physical Inventory Listing Report at the time of a physical inventory as is currently stated in § 75.35 for all licensees. The proposed rule would have required the reports to be completed within 60 days of the beginning of the physical inventory for independent spent fuel storage installations, reactors, and Category I, II, and III facilities. The modifications in the final rule do not affect licensees reporting under part 75. Because most facilities are only required to conduct a physical inventory once a year, the reporting frequency would be reduced from twice a year to once a year. For most licensees, reconciliation once a year instead of twice a year does not appear to be a problem because the number of transactions is such that

reconciliation is manageable. For the gaseous diffusion plants that have a significantly larger number of transactions, reconciliation could be more difficult if performed once a year. However, the gaseous diffusion plants, by practice, currently reconcile their records with the NMMSS on a bimonthly basis and can continue this practice under the revised regulation.

Based on public comments, the final rule has been modified from the proposed rule. The reporting requirements for Category I facilities will remain unchanged from the current requirements. Category I licensees will still be required to compile the reports as of March 31 and September 30 of each year and submit the Material Balance Reports and the Physical Inventory Listing Reports within 30 days after the end of the period covered by the report. The requirements for all other facilities will be revised as outlined in the proposed rule.

As indicated, a licensee is required to submit the semiannual Material Balance Report and Inventory Composition Report within 30 days of March 31 and September 30 of each year. The preestablished timing of the submittal has two drawbacks. Specifically, the reports rarely coincide with a physical inventory, and all the reports for a given period are provided to the NMMSS at the same time. The data from a physical inventory are significantly more meaningful than the book values reported during the interim periods. Staggering the submittals would benefit the NMMSS contractor because not all licensees conduct inventories at the same time. Requirements for the NMMSS contractor would likely be spread more evenly throughout the year. Modifying the requirement to stipulate that the Material Balance Report and the Inventory Composition Report be submitted at the time of the physical inventory could alleviate these problems, provide more meaningful data, and be more efficient and effective.

Another consideration is whether there would be an adverse impact on meeting IAEA safeguards requirements. Only one Material Status Report is required per year under the terms of the US/IAEA Safeguards Agreement and § 75.35. Consequently, there would be no adverse impact on meeting IAEA safeguards requirements.

The final rule revises the timing to complete the Material Balance Report and Physical Inventory Listing Report to coincide with a facility's physical inventory, except for Category I licensees. The final rule also provides additional time to complete the paperwork, except for Category I

licensees and those licensees reporting under part 75. Identification of an actual loss or theft of material would still be reported within one hour per the current regulations.

These changes provide most licensees with additional flexibility and reduce the regulatory burden. The final rule uses Physical Inventory Listing Report instead of Inventory Composition Reports to be consistent with the name of the actual form (DOE/NRC Form 742C).

#### *Categorical Exclusion*

The categorical exclusion (§ 51.22(c)(12)) covers the issuance of an amendment to a license under 10 CFR parts 50, 60, 61, 70, 72, or 75 relating to safeguards matters or approval of a safeguards plan. It does not address amendments to safeguards plans. As written, the categorical exclusion can be used for approval of a safeguards plan. However, an environmental assessment (EA) may be necessary for approval of an amendment to the safeguards plan. Initial approval is covered by the categorical exclusion, but amendments do not appear to be covered. This inconsistency appears to be inadvertent in that the Statement of Considerations for the rulemaking that included this categorical exclusion stated that this categorical exclusion was needed to implement new safeguards regulations through incorporation of provisions into licenses, as well as to "permit modifications to licensees' safeguards programs established under existing requirements." See 49 FR 9352, at 9373 (March 12, 1984). The final rule adds language covering revisions to safeguards plans to rectify this omission. Safeguards plans include physical protection related plans and material control and accounting related plans. In addition, the categorical exclusion currently lists several parts to which it applies, however, part 76 is not included in the listing and should be included. Providing a generic reference to any part of 10 CFR chapter I corrects the current listing and avoids the need for revising the categorical exclusion when new parts need to be added to the listing.

The NRC staff consulted with the Council on Environmental Quality (CEQ) concerning this amendment to the categorical exclusion in 10 CFR 52.22(c)(12). CEQ determined that this amendment addresses the requirements of the CEQ regulations for agency procedures.

#### *General and Category II MC&A Requirements*

In 1982, the NRC began an effort to move the MC&A requirements from part 70 to part 74 and make the requirements more performance oriented. Subsequent rulemakings on February 25, 1985 (50 FR 7575) and March 30, 1987 (52 FR 10033), moved the requirements for Category I and III facilities. The MC&A requirements for Category II facilities and the general MC&A requirements are currently interspersed among the safety and general licensing requirements of part 70. The requirements regarding Category II material are also overly prescriptive as they include some requirements that are more stringent than the requirements for Category I facilities. This rule moves the remaining general MC&A requirements and the requirements for Category II facilities from part 70 to part 74. The rule also makes the MC&A requirements for the Category II facilities more risk-informed. The risk-informed approach for the Category II facilities is consistent with the current MC&A regulations that apply to Category I and III facilities. In addition, the rule makes needed modifications that were missed in earlier updates of the MC&A regulations, corrects typographical errors, deletes old implementation dates, clarifies some definitions, and includes several new definitions.

Specifically, the rule clarifies the definitions for "Category IA material" and "inventory differences" and makes them consistent with the current practice. The terms "beginning inventory," "plant," "removals from inventory," and "removals from process," are newly defined. The definition for "removals" is deleted. There has been some confusion by licensees over the term "removals." The term "removals" is replaced by the terms "removals from process" and "removals from inventory." The definitions are consistent with the current practice. In addition, both the terms "beginning inventory" and "plant" are used in the current rule language, but were never defined in the rule. The definitions are consistent with the definitions contained in the current regulatory guides. The changes to the Category II requirements are discussed under the Category II heading.

#### *General Requirements*

The current general MC&A requirements in part 70 require a licensee to keep records showing the receipt, inventory, disposal, and transfer of all SNM. The requirements also specify the retention period for those

records. These recordkeeping requirements are not being changed, just relocated. The general requirements currently in §§ 70.51(b)(1) through (b)(5) are captured in new §§ 74.19 (a)(1) through (a)(4). Furthermore, the reporting requirements currently in § 70.52 requiring a licensee to report loss or theft of SNM remain unchanged and are included in § 74.11. The requirements for a Nuclear Material Transfer Report in § 70.54 remain unchanged and are captured by § 74.15. The existing requirement in § 70.51(d) for all licensees authorized to possess more than 350 grams of contained SNM to conduct an annual physical inventory of all SNM is retained and is moved to new § 74.19(c). The requirement currently in § 70.51(c) for all licensees authorized to possess SNM in a quantity exceeding one effective kilogram of SNM to establish, maintain, and follow written MC&A procedures that are sufficient to enable the licensee to account for the SNM, is moved to new § 74.19(b). The requirements in § 70.53 are moved to §§ 74.13 and 74.17.

#### *Category II Requirements*

Current domestic MC&A regulations in part 70 for licensees who possess greater than one effective kilogram of strategic special nuclear material in irradiated fuel reprocessing operations or moderate strategic special nuclear material have been interspersed among the safety and general licensing requirements in part 70. These MC&A requirements are being moved to part 74 to avoid confusion with the safety requirements in part 70, to allow the requirements to be presented in a more orderly manner, and to make them more risk-informed. Emphasis has been given to performance requirements rather than prescriptive requirements to allow licensees to select the most cost-effective way to satisfy NRC requirements.

The basic MC&A requirements for Category II facilities are being retained in part 74 but are presented in a more organized manner. The performance objectives for Category II facilities are: (1) Confirmation of the presence and location of SNM; (2) prompt investigation and resolution of any anomalies indicating a possible loss of SNM; (3) rapid determination of whether an actual loss of a significant quantity of SNM has occurred; and (4) timely generation of information to aid in the investigation and recovery of missing SNM in the event of an actual loss. Implementation of these objectives is commensurate with the amount and type of material. The principal differences between the MC&A

requirements in this final rule and those in the previous regulations are:

(1) The revised regulations reduce the required frequencies of Category II physical inventories from the current frequency of every 2 months for SSNM and every 6 months for everything else to every 9 months. From a safeguards risk and graded approach perspective, this is consistent with the annual frequency for Category III facilities and semiannual frequency for Category I facilities;

(2) The concept of Inventory Difference (ID) and Standard Error of the Inventory Difference (SEID) is used to replace the Material Unaccounted For (MUF) concept in the statistical program. This is consistent with the statistical terms and methods used in part 74 for Category I and III facilities and with NRC guidance and reference documents;

(3) The significance testing of ID with a three SEID limit is less restrictive than the test level of two SEID specified in previous § 70.51(e)(5). This is consistent with Category I facilities that use a three-SEID limit with a constraint on SEID of 0.10 percent of active inventory. The measurement quality constraint for Category II remains at 0.125 percent of active inventory for SEID. This change results in a reduction of unwarranted, disruptive, and costly investigations, reports, or responses to ID threshold actions;

(4) An item control program for Category II facilities that is consistent with Category III facilities is added. Category II item control requirements are less costly than the more stringent Category I item monitoring. The item control requirements mainly consist of providing current knowledge of location, identity, and quantity of plant-wide items existing for at least 14 days. The performance-based program allows a licensee to propose its item control method and frequency;

(5) The combined standard error concept and a de minimus quantity for plutonium and uranium in the evaluation of shipper-receiver differences is used. This is consistent with the requirements for Category I and III facilities in part 74; and

(6) The required frequency for the independent review and assessment of the facility's MC&A program is changed from annual to a minimum of 18 months. From a safeguards risk and graded approach perspective, this compares to the annual requirement for Category I and the every 2-year requirement for Category III.

The consolidation of regulations is a significant step toward NRC's regulatory reform goal of providing a graded

approach to MC&A regulation. It also reduces the regulatory burden by making it easier for a licensee to find the MC&A requirements that apply to its facility.

The NRC has made changes to the final rule based on public comments (see the "Summary of Public Comments on the Proposed Rule" section). In summary the changes to the final rule include (1) retaining the current material status reporting requirements for Category I licensees; (2) retaining the current allowance for alarm resolution calls (§ 74.57(c)) to be made on the next scheduled workday when falling on a holiday or weekend; and (3) clarifying that the Category II requirements continue to apply to irradiated fuel reprocessing facilities as is in the current regulations.

#### **Summary of Public Comments on the Proposed Rule**

This analysis presents a summary of the comments received on the proposed rule, the NRC's response to the comments, and changes made to the final rule as a result of these comments.

The NRC received four comment letters on the proposed rule. Three were from industry (including NEI) and one from a consulting firm.

In general, two commenters were opposed to specific aspects of the proposed rule (the change in material balance reporting and the change to the alarm resolution notification), both of these commenters are Category I facilities. NEI and the consulting firm generally supported the rulemaking, although the consulting firm was opposed to the change requiring alarm resolution notifications made to the NRC Operations Center. The consulting firm also provided specific recommendations to improve the final rule. The comments on the proposed rule are generally contained within four categories. The first category contains general comments, followed by comments on the material balance reporting, comments on the Category II requirements, and other comments.

#### *A. General Comments on the Proposed Rule*

##### 1. Support of the Proposed Rule

*Comment:* Two of the commenters provided specific comments in support of the proposed rule. NEI indicated that the decreased frequency of SNM inventory reporting for Category II and III facilities will reduce the regulatory burden on licensees and that the partial harmonization of the inventory reporting requirements of 10 CFR parts 74 and 75 was commendable. Overall

NEI indicated support of the proposed amendments and believes that they will reduce resource demands placed on both the NRC and individual licensees. The consulting firm indicated that without the proposed changes, the MC&A requirements for SNM in amounts of moderate strategic significance (Category II) would remain prescriptive and irrationally more restrictive than those for formula quantities of strategic significance (Category I).

*Response:* The NRC is not making any changes in the final rule that the NRC believes would negate the industry's general support for this rulemaking.

## 2. Elimination of MC&A Regulations for Irradiated Fuel Reprocessing Plants

*Comment:* One commenter expressed concern that the MC&A requirements for irradiated fuel reprocessing plants that are located in 10 CFR 70.51(e) were eliminated. The commenter noted that if this was the intent then it should have been highlighted in the Statement of Considerations. The commenter believes that it was prudent to keep in place these key regulations, which may not be easily replaced if a need were to arise. The commenter offered specific suggestions to move the reprocessing requirements to § 74.41, clarify the performance objectives, and rename subpart D to include SNM in Irradiated Fuel Reprocessing Operations.

*Response:* It was not the NRC's intent to eliminate the requirements for irradiated fuel reprocessing plants. MC&A requirements for reprocessing plants were originally considered in the proposed rule for MC&A requirements for facilities that use formula quantities of strategic SNM (49 FR 4091; February 2, 1984). These requirements were dropped from the final rule because of unresolved questions on whether an irradiated fuel reprocessing facility could comply with all regulatory requirements and the negative outlook for domestic reprocessing (52 FR 10033; March 30, 1987). Although a reprocessing facility would likely be considered a Category I facility based on possession limits for plutonium, language was inserted in § 70.51(e) to cover reprocessing facilities. The requirements for an irradiated fuel reprocessing facility were the same as for a facility possessing SNM of moderate significance (Category II), no changes specific to reprocessing were introduced. In this final rule, the language in § 74.41 has been clarified to identify the applicability to irradiated fuel reprocessing facilities. However, it is important to note that if reprocessing in this country were to become viable,

the NRC would likely develop MC&A requirements specific for reprocessing.

### 3. Table 1

*Comment:* One commenter stated that Table 1 was incorrect for this rulemaking. The commenter stated the table contained authorized possession and use limits rather than specific information on possession limits for Category I, II, and III licensees. The commenter noted that it is incorrect to state that all such SNM is unirradiated as this would only be true for physical protection requirements.

*Response:* The table was intended to simplify the complexities of the possession thresholds for Category I, II, and III facilities. The commenter is correct that the term unirradiated should be removed and the table has been revised. The table originated from appendix M of 10 CFR part 110.

## B. Material Balance Reporting

### 1. Tying Material Balance Reports and Physical Inventory Listing Reports to the Physical Inventory

*Comment:* Two commenters (both Category I facilities) were opposed to changing the reporting dates for the Material Balance Reports and the Physical Inventory Listing Report. The commenters preferred that the set dates of March 31 and September 30 be retained. One commenter stated that tying the reporting dates to the physical inventory would place a burden on the licensee during the time period in which licensee efforts are placed on inventory reconciliation and that the new time could have an adverse impact on the quality of the inventory difference. The other commenter indicated that because they also have similar DOE reporting requirements for DOE material at their site, the proposed change would have the effect of forcing them to make quarterly reports. The commenter was concerned that different DOE and NRC reporting requirements would cause confusion and inconsistencies. The commenter also stated that the proposed 45 day limit for high enriched uranium would result in licensees having to complete three different reports simultaneously.

*Response:* The proposed changes to the material balance reporting requirements were intended to provide more flexibility to licensees, while reducing the burden and providing better data to the NMMSS. This is accomplished for the majority of licensees impacted by the proposed rule change. Because Category I facilities are required to conduct a physical inventory semiannually, these facilities

do not receive the major benefit of the change (*i.e.* less frequent reporting). Both Category I facilities requested that these changes not be adopted by NRC because it would increase their burden for making these reports. Imposing an increased burden on Category I facilities was not intended, therefore, the current requirements for Category I facilities will be retained. Category I facilities will continue to compile the Material Balance Reports and Inventory Composition Reports as of March 31 and September 30 of each year and submit the reports within 30 days after the end of the period covered by the report. The final rule reflects the retention of the current Category I requirements. The change will be retained for all other facilities. The final rule requires the reports to be completed within 60 days of the beginning of the physical inventory for all other facilities

## C. Category II Requirements

### 1. Sealed Sources

*Comment:* One commenter stated that § 74.41(a) should be reworded to bring it into line with the current § 70.51(e), which excluded SNM used in sealed form. The commenter stated that emphasis for exception should be more on the use of sealed sources rather than possession. The commenter further stated that strategic SNM (plutonium, uranium-233, and uranium highly enriched in uranium-235) should not be part of this exclusion and that only Category II low-enriched uranium quantities possessed and used as sealed sources is appropriate.

*Response:* The proposed rule did include an exclusion for sealed sources when determining if a licensee fell under the comprehensive requirements for a Category II facility. This exclusion is consistent with the current requirements. The NRC disagrees with the remainder of the comment. A distinction cannot be made between possession and use of sealed sources. The NRC may not have knowledge if a specific sealed source was actually used by any given licensee versus merely possessed by the licensee. Trying to make this distinction would impose unnecessary burden on both the licensee and the NRC. Most licenses authorize possession and use of sealed sources. Although the sealed sources may not count towards the threshold for a Category II facility, the sealed sources are included in a facility's physical inventory. The current regulations include strategic SNM sealed sources in the exclusion and the commenter has not provided sufficient justification to support the change.



#### D. Information Collection

##### 1. Burden Estimate

*Comment:* NEI noted that as the NRC's Electronic Information Exchange system is not yet functional for parts 70 and 76 licensees and that both licensees and the NRC could possibly incur significant resources implementing electronic data submission protocols. NEI indicated that if the electronic data submission formats closely resemble those of DOE/NRC forms 742 and 742C, no change in licensee resources should be expected.

*Response:* Licensees have been required to submit DOE/NRC forms 742 and 742C in electronic form since 1994. Approximately 72 percent of licensees submitted the information electronically in 2000. Implementation of the Electronic Information Exchange should not impact the electronic submission of forms 742 and 742C.

##### 2. Changes to Guidance Documents

*Comment:* One commenter noted that no provision had been made to update NRC guidance documents (e.g. NUREG/BR-007) with the new amendments.

*Response:* NRC agrees that a minor revision to NUREG/BR-007 will be necessary to implement the rule changes. The NUREG currently states that "Reports are to be made as of March 31 and September 30 of each year, or alternate dates if authorized by the NRC and filed within thirty (30) days after the end of the period covered by the report." Although the rule changes result in an authorized alternate date for submission of the reports, the NUREG will be modified to reflect that the reports are to be filed within 60 days for facilities handling less than a Category I quantity, but at least 350 grams of fissile material. Because this is considered a minor change, the NRC staff does not plan to solicit public comment on this change to the NUREG. An errata sheet containing the change will be issued at the time the rule becomes effective.

##### 3. Evaluation of Data Library

*Comment:* One commenter recommended that the NRC evaluate the data library that is created through the NMMSS system to assure that it can be readily accessed and the data retrieved in various combinations.

*Response:* All of the subject data submitted by a licensee is available and accessible to the licensee. The licensee can resolve technical concerns or questions about reading or accessing the licensee's data by directing their questions to the NMMSS operator who warehouses the data for the NRC. The

NMMSS operator can provide licensees their data in electronic format that would allow the licensee to sort and combine the data as necessary.

#### E. Other Comments

##### 1. Alarm Resolution

*Comment:* Two commenters (both Category I facilities) objected to the elimination of the notification exception for holidays and weekends in § 74.57(c). Currently, notification would occur on the next scheduled workday. The reason provided by one of the commenters is that the facility has a 5-day work week. Two commenters objected to providing the alarm resolution notifications in §§ 74.57(c) and 74.57(f)(2) to the Operations Center. One commenter believes that notification should be made to the Safety and Safeguards Support Branch, NMSS or to the NRC Resident Inspector due to the staff's knowledge of the complexity of the process and the variability associated with certain process monitoring units. The other commenter stated that notification to the Operations Center of unresolved alarms would be an unnecessary added burden to both licensees and the NRC. The commenter stated that it would not be risk-informed nor performance-based. The commenter stated that the Operations Center would not have on duty, staff with the performance capability necessary to take meaningful action, except to notify NMSS licensing staff. These notifications should continue to be reported directly to NRC licensing staff who already would be aware of the initiation of the licensee's investigative procedures and following progress with the assistance of NRC inspectors for appropriate response. The rule should name the Director of NMSS, but in practice, the specific NMSS licensing unit—with regular and emergency telephone numbers—could be listed as the contact and updated in each licensee's NRC-approved fundamental nuclear material control plan. The commenter stated that this graded, working-level approach has proven suitable over 30 years without overaction or a compelling need for change.

*Response:* The NRC agrees to reinsert the notification exception for weekends and holidays in § 74.57(c). A short delay in notification on weekends and holidays is acceptable. Any discovery of an actual loss or theft of SNM requires the licensee to report within 1 hour of discovery under § 74.11. The final rule reflects the retention of the exception for weekends and holidays. Notification

would occur on the next scheduled workday.

The NRC does not agree with the commenters' request to change the notification from the NRC Operations Center to either the licensing unit or the Resident Inspector. NRC staff members are not always available to take calls from licensees due to leave, training, travel, etc. The call could easily be routed to voice mail or to an individual not familiar with the facility. While the licensee may have technically notified the NRC by leaving a voice mail message for a staff member, the NRC may not have actual knowledge until the staff person returns to the office. Notification to the Operations Center provides a record of the call and ensures that the appropriate NRC staff will be notified so that the necessary follow-up actions can occur. The Operations Center is manned 24-hours-a-day, 7-days-a-week, so that the licensee can be sure that someone is available to take the call. The NRC does not believe that calling the Operations Center instead of a staff member is an unnecessary burden. Either way, the licensee makes a phone call and provides pertinent information. In both cases, NRC staff would contact the licensee for follow-up information, as appropriate. When the Operations Center receives a notification from a licensee, they will notify the appropriate staff in NMSS. The NMSS or regional staff will conduct any follow-up activities. According to the NMSS licensing staff, the NRC receives approximately one of these notifications per year.

##### 2. Threshold Possession Limits

*Comment:* One commenter stated that the threshold for SNM of low strategic significance would result in an overlapping in coverage between Category III SNM and that proposed for moderate strategic significance or Category II. The example provided by the commenter is that the comprehensive Category III measures would not be triggered until authorized possession and use levels reach 1001 grams of plutonium, uranium-233, or high enriched uranium (or some combination) which is far beyond the 501-gram point where Category II would begin. The commenter pointed out that the beginning point for Category III facility implementation should not be set above the floor for Category II. There should be no gaps or overlapping between the scopes of Category I, II, and III MC&A programs to have a meaningful graded safeguards program in terms of risk and expected performance. The commenter stated that the proposed § 74.41 threshold is more

appropriate, and that the threshold used in current § 70.51(e) of a quantity exceeding one effective kilogram of strategic special nuclear material is inappropriate for Category II because it would take a formula quantity of uranium enriched to 20 percent (5 kilograms uranium-235), which would be a Category I amount, to reach one effective kilogram. The commenter indicated that the NRC should fully understand the ramifications from using the concept of greater than one effective kilogram when grading across Categories I, II, and III.

*Response:* The NRC understands the commenter's concern. The NRC did not propose a change to the threshold limits for Category I or III in the proposed rule, only for Category II. The comment concerning the threshold value for Category III is beyond the scope of this rulemaking. The commenter is correct that the comprehensive Category III measures would not be triggered until a licensee was authorized to possess and use one effective kilogram of SNM of low strategic significance. If a licensee were to possess 1001 grams of plutonium or uranium-233, the licensee would have exceeded the upper threshold for a Category III license and would actually be a Category II facility. The definition for SNM of low strategic significance very clearly states that the upper threshold is less than the amount of SNM of moderate strategic significance. Quantities over 1000 grams of high enriched uranium or over 500 grams of plutonium or uranium-233 would cause a facility to become a Category I or II facility. The effective kilogram of SNM of low strategic significance does not include only high enriched uranium, plutonium, and uranium-233, but also includes uranium at lower enrichments. A licensee can not possess an effective kilogram of only high enriched uranium, plutonium, and uranium-233 and still be considered a Category III facility. The beginning point for the comprehensive Category III measures is not set above the floor for Category II as stated by the commenter. Although the use of one effective kilogram is confusing, the definition of SNM of low strategic significance prevents the overlap. The one effective kilogram has been retained for irradiated fuel reprocessing facilities, it does not apply to the moderate strategic significance material. If reprocessing ever becomes viable in this country, the NRC would likely develop requirements specifically for a reprocessing facility.

#### Summary of Final Revisions

This final rule makes several changes to parts 51, 61, 70, 72, 73, 74, 75, 76,

and 150, which are characterized as follows: The timing and frequency for submitting Material Balance Reports and Inventory Composition Reports in parts 72 and 74 are amended. The remaining MC&A requirements in part 70 are moved to part 74. The MC&A requirements for Category II facilities are made more risk-informed. Part 51 is amended to clarify that the categorical exclusion for safeguards plans also applies to amendments to the safeguards plan. Conforming changes are made to parts 61, 70, 73, 75, 76, and 150 to reflect the relocation of the MC&A requirements.

#### *Section 51.22 Criterion for Categorical Exclusion; Identification of Licensing and Regulatory Actions Eligible for Categorical Exclusion or Otherwise Not Requiring Environmental Review*

This section is revised to clarify that the categorical exclusion used for issuance of an approval of a safeguards plan can also be used for issuance of an approval for an amendment to the safeguards plan. Additionally, the listing of parts 50, 60, 61, 70, 72, and 75 is changed to a more generic reference to 10 CFR chapter I. This change avoids an incomplete listing (e.g., part 76 was inadvertently left out).

#### *Section 61.80 Maintenance of Records, Reports, and Transfers*

This section is revised to delete the reference to §§ 70.53 and 70.54, and add the new reference to §§ 74.13 and 74.15.

#### *Section 70.8 Information Collection Requirements: OMB Approval*

This section is revised to change the OMB information collection requirements to reflect the sections being deleted from part 70.

#### *Section 70.19 General License for Calibration or Reference Sources*

This section is revised to delete the reference to §§ 70.51 and 70.52, and add the new reference to §§ 74.11 and 74.19.

#### *Section 70.20a General License to Possess Special Nuclear Material for Transport*

This section is revised to include a reference to § 74.11.

#### *Section 70.22 Contents of Applications*

This section is revised to delete the reference to § 70.58 and add the new reference to § 74.41.

#### *Section 70.23 Requirements for the Approval of Applications*

This section is revised to correct a reference from a nonexistent section to the correct section.

#### *Section 70.32 Conditions of Licenses*

This section is revised to reflect the transfer of the MC&A requirements from part 70 to part 74, to correct an error in wording, and to clarify that changes to a licensee's MC&A program that represent a decrease in effectiveness must be made via an amendment application pursuant to § 70.34, consistent with current licensing policy.

#### *Section 70.51 Material Balance, Inventory, and Records Requirements*

This section is revised to rename the section and delete the MC&A requirements because they would be replaced by the requirements in part 74. Paragraphs (b)(6), (b)(7), (i)(1), and (i)(2) would be redesignated as paragraphs (a), (b), (c)(1), and (c)(2) respectively.

#### *Section 70.52 Reports of Accidental Criticality or Loss or Theft or Attempted Theft of Special Nuclear Material*

This section is renamed to reflect the relocation of the reporting of theft or loss of SNM. The section is revised to delete paragraphs (b) and (d) because they would be covered by the requirements found in § 74.11. The remaining paragraphs are redesignated. Paragraph (a) and new paragraph (b) are revised to remove the loss of SNM.

#### *Section 70.53 Material Status Reports*

This section is deleted in its entirety, the requirements in this section are covered by the requirements found in §§ 74.13 and 74.17.

#### *Section 70.54 Nuclear Material Transfer Reports*

This section is deleted in its entirety. The requirements in this section are covered by the requirements found in § 74.15.

#### *Section 70.57 Measurement Control Program for Special Nuclear Materials Control and Accounting*

This section is deleted in its entirety. The requirements in this section are replaced by the requirements found in part 74, subpart D.

#### *Section 70.58 Fundamental Nuclear Material Controls*

This section is deleted in its entirety. The requirements in this section are replaced by the requirements found in part 74, subpart D.

#### *Section 72.76 Material Status Reports*

This section is revised to change the timing of the submittal of the Material Status Reports from every March 31 and September 30 to within 60 calendar days of the beginning of the physical inventory. The language is revised to

reflect the wording in § 74.13 to avoid any confusion over the term “Material Status Reports.” The language clearly states that both the Material Balance Report and the Physical Inventory Listing Report are to be submitted.

*Section 73.67 Licensee Fixed Site and In-Transit Requirements for the Physical Protection of Special Nuclear Material of Moderate and Low Strategic Significance*

This section is revised to delete the reference to § 70.54 and add a new reference to § 74.15.

*Section 74.1 Purpose*

This section is revised to reflect the addition to part 74 of the general MC&A requirements and the requirements for SNM of moderate strategic significance. The reference to §§ 70.51, 70.57, and 70.58 is deleted.

*Section 74.2 Scope*

This section is revised to reflect the relocation of the general reporting and recordkeeping requirements, and exempt part 72 licensees from the general reporting and recordkeeping requirements, as they are currently covered under the part 72 requirements.

*Section 74.4 Definitions*

This section is revised to clarify the definitions for “Category IA material” and “inventory differences.” The terms “beginning inventory,” “plant,” “removals from inventory,” and “removals from process” are newly defined. The definition for “removals” is deleted. There has been some confusion by licensees over the term “removals.” The term “removals” is replaced by the terms “removals from process” and “removals from inventory.” The definitions are consistent with the current practice. In addition, both the terms “beginning inventory” and “plant” are used in the current rule language, but were never defined in the regulations. The definitions are consistent with the definitions contained in the current regulatory guides.

*Section 74.8 Information Collection Requirements: OMB Approval*

This section is revised to change the OMB collection requirements to reflect the relocation of provisions from part 70.

*Section 74.13 Material Status Reports*

This section is revised to delete paragraph (b), and redesignate paragraphs (a)(1) and (a)(2) as (a) and (b), respectively. The new paragraph (a) is revised to require a Material Balance

Report and Physical Inventory Listing Report to be submitted: (1) Within 60 calendar days of the beginning of physical inventory as required in §§ 74.19(c), 74.31(c)(5), 74.33(c)(4), or 74.43(c)(6); or (2) for licensees subject to the requirements of § 74.51 to compile a report as of March 31 and September 30 of each year and file it within 30 days after the end of the period covered by the report. The original paragraph (b) is deleted because the requirements would be replaced by the new subpart D.

*Section 74.17 Special Nuclear Material Physical Inventory Summary Report*

This section is revised to reflect the relocation of the MC&A requirements and to change the address for reporting physical inventory results in paragraph (c). The reports are to be submitted to the Director, Office of Nuclear Material Safety and Safeguards, instead of the regions to be consistent with paragraphs (a) and (b).

*Section 74.19 Recordkeeping*

A new section is added to address the general recordkeeping requirements for MC&A that were previously included in § 70.51. These requirements originate from §§ 70.51(b)(1) through (b)(5), 70.51(c), and 70.51(d).

*Section 74.31 Nuclear Material Control and Accounting for Special Nuclear Material of Low Strategic Significance*

This section is revised to delete implementation dates that are no longer applicable. This section is also revised to change 9 kilograms to 9000 grams because the use of 9 kg implied that the NRC will accept a rounding to the nearest kg, when in fact the NRC requires rounding to the nearest gram.

*Section 74.41 Nuclear Material Control and Accounting for Special Nuclear Material of Moderate Strategic Significance*

A new section is added to provide the general performance objectives, implementation schedule and system capabilities and requirements for special nuclear material of moderate strategic significance.

*Section 74.43 Internal Controls, Inventory, and Records*

A new section is added to provide the requirements for internal controls, inventory, and recordkeeping for special nuclear material of moderate strategic significance.

*Section 74.45 Measurements and Measurement Control*

A new section is added to provide the requirements for measurements and measurement control for special nuclear material of moderate strategic significance.

*Section 74.51 Nuclear Material Control and Accounting for Strategic Special Nuclear Material*

This section is revised to delete paragraphs (c)(1) and (c)(2) to eliminate implementation dates that are no longer relevant. Paragraph (c) is revised to reflect that new Fundamental Nuclear Material Control plans would be implemented upon issuance of a license or amendment, or by the date specified in a license condition. Paragraph (d)(1) is deleted because it is no longer necessary to provide an 18-month exemption for implementation. Paragraph (d)(2) is redesignated as paragraph (d).

*Section 74.57 Alarm Resolution*

This section is revised to reflect an NRC organizational change: the “Domestic Safeguards and Regional Oversight Branch” and the “Division of Safeguards and Transportation” are no longer used as names of organizational units. Also, the stated phone number is no longer applicable. Notifications would be made to the NRC Operations Center.

*Section 74.59 Quality Assurance and Accounting Requirements*

This section is revised to provide proper identification of acronyms, correct the accidental omission of the phrase “contained in high enriched uranium,” provide improved punctuation, correct typographical errors, and require that reports be submitted to the Director, Office of Nuclear Material Safety and Safeguards.

*Section 75.21 General Requirements*

This section is revised to delete the reference to § 70.51 and add the new reference to § 74.15.

*Section 76.113 Formula Quantities of Strategic Special Nuclear Material—Category I*

This section is revised to delete the reference to § 70.51 and replace it with the new reference to § 74.19.

*Section 76.115 Special Nuclear Material of Moderate Strategic Significance—Category II*

This section is revised to delete the reference to §§ 70.51, 70.52, 70.53, 70.54, 70.57, and 70.58 and add the new

reference to §§ 74.19, 74.41, 74.43, and 74.45.

*Section 76.117 Special Nuclear Material of Low Strategic Significance—Category III*

This section is revised to delete the reference to § 70.51 and add the new reference to § 74.19.

*Section 150.20 Recognition of Agreement State Licenses*

This section is revised to delete the reference to §§ 70.51, 70.53, and 70.54 and add the new reference to §§ 74.11, 74.15, and 74.19.

### Criminal Penalties

For the purpose of section 223 of the Atomic Energy Act (AEA), the Commission is issuing the final rule to amend 10 CFR parts 70, 72, and 74 under one or more of sections 161b, 161i, or 161o of the AEA. Willful violations of the rule are subject to criminal enforcement.

### Agreement State Compatibility

Under the “Policy Statement on Adequacy and Compatibility of Agreement State Programs” approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), most of this final rule is classified as compatibility Category “NRC.” However, certain parts of the final rule are a matter of consistency among States and Federal safety requirements. The revisions to part 61 and §§ 70.19(c), 70.51(a), 70.51(b), 150.20(b), and new § 74.19(a) would be classified as Category C. A conforming change to § 70.8(b) would be classified as Category D. Although these sections are subject to various degrees of compatibility regarding the Agreement States, the amendments are not expected to impact existing Agreement States regulations. The actual requirements are not changing, they are only being moved to a new location. Therefore, it is not expected that Agreement States will need to make conforming changes to their regulations.

Category C means the provisions affect a program element, the essential objectives of which should be adopted by the State to avoid conflicts, duplications, or gaps in the national program. The manner in which the essential objectives are addressed need not be the same as NRC, provided the essential objectives are met. Category D means the program element does not need to be adopted by the States for purposes of compatibility. Compatibility is not required for Category “NRC” regulations. The NRC program elements

in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of 10 CFR chapter I. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State’s administrative procedure laws, but does not confer regulatory authority on the State.

### Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC would revise the MC&A regulations. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

### Environmental Impact: Categorical Exclusion

The NRC has determined that the changes to part 51, the changes to the reporting requirements, and the movement of the MC&A requirements to part 74 are the types of actions described in categorical exclusion 10 CFR 51.22(c)(2) and (3). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for these portions of the final rule. An environmental assessment has been prepared for the remainder of the final rule.

### Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission’s regulations in subpart A of 10 CFR part 51, not to prepare an environmental impact statement for this final rule because the Commission has concluded based on an EA that this final rule would not be a major Federal action significantly affecting the quality of the human environment. The EA prepared to support this rulemaking covers the changes to the Category II requirements.

The determination of this EA is that there will be no significant impact to the public from this action. The NRC requested public comments on the environmental assessment and on any environmental justice considerations that may be related to this rule. No comments were received.

The NRC requested the views of the States on the environmental assessment for this rule. No comments were received.

### Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, approval number 3150–0004, –0009, –0058, and –0123.

Because the rule will reduce existing information collection requirements, the public burden for this information collection is expected to be decreased by approximately 7 hours per licensee for licensees reporting annually, instead of semiannually, on NRC forms 742 and 742C. This reduction includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the information collection. There is essentially no change in overall burden for the requirements in 10 CFR part 70 that are being moved to 10 CFR part 74. Send comments on any aspect of these information collections, including suggestions for further reducing the burden, to the Records Management Branch (T–6 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at [INFOCOLLECTS@NRC.GOV](mailto:INFOCOLLECTS@NRC.GOV); and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0004, –0009, –0058, and –0123), Office of Management and Budget, Washington, DC 20503.

### Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for an information collection requirement unless the requesting document displays a currently valid OMB control number.

### Regulatory Analysis

#### *Statement of the Problem and Objective*

The Commission is amending an aspect of the MC&A requirements to reduce the regulatory burden and provide additional flexibility to licensees required to submit Material Balance Reports and Inventory Composition Reports. The current regulations require a licensee authorized to possess, at any one time or location, SNM in a quantity totaling more than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, to complete and

submit in a computer-readable format Material Balance Reports concerning SNM received, produced, possessed, transferred, consumed, disposed of, or lost. These reports are to be compiled as of March 31 and September 30 of each year and filed within 30 days after the end of the period. Each licensee is also required to file a statement of the composition of the ending inventory (also called the Physical Inventory Listing Report) along with the Material Balance Report. These twice yearly reports are typically based on book values as opposed to physical inventory results because the dates do not always coincide with the timeframe for a facility's physical inventory. Physical inventories for Category III facilities are conducted on an annual basis, semiannually for Category I facilities, and every 2 to 6 months for Category II facilities. By revising the timeframe to complete their Material Balance Reports and Physical Inventory Listing reports to coincide with the physical inventory and providing additional time to complete the paperwork, the regulatory burden on most licensees will be reduced. At this time, the NRC is not changing the reporting period for Category I facilities.

The categorical exclusion (§ 51.22(c)(12)) covers the issuance of an amendment to a license under 10 CFR parts 50, 60, 61, 70, 72, or 75, relating to safeguards matters or approval of a safeguards plan. However, an EA would be necessary for approval of an amendment to the safeguards plan. This inadvertent omission of a categorical exclusion for amendments is rectified in the final rule by adding language covering revisions to safeguards plans. In addition, the categorical exclusion currently lists several parts. Part 76 is not included in the listing but should be included. Providing a generic reference to any part of 10 CFR chapter I corrects the current listing and avoids the need for changes due to new parts being added. These changes will enhance the NRC's efficiency and reduce potential burden on its staff.

In 1982, the NRC initiated an effort to move the MC&A requirements from 10 CFR part 70, "Domestic Licensing of Special Nuclear Material," to 10 CFR part 74, "Material Control and Accounting of Special Nuclear Material." The initiative also included efforts to make the requirements more performance oriented. In 1985, the MC&A requirements for Category III facilities were made more performance oriented and moved to part 74 (50 FR 7575; February 25, 1985). The requirements for Category I facilities were similarly moved in 1987 (52 FR

10033; March 30, 1987). The MC&A requirements for Category II facilities and some of the general MC&A requirements are still interspersed among the safety and general licensing requirements of part 70. The requirements regarding Category II material are also overly prescriptive, in some cases having more stringent requirements than those for a Category I facility. Although there are no current operating Category II licensed facilities (the only Category II facility has a possession only license and is undergoing decommissioning), it is still beneficial to move the requirements and make them less prescriptive. These modifications will enhance the regulatory process by providing any future Category II licensee with a better understanding of the procedures and requirements for MC&A, and will complete consolidation of the MC&A requirements in part 74. Conforming changes are also being made to parts 61, 73, 75, 76, and 150 to reflect the relocations of the MC&A requirements.

In addition, the final rule corrects several typos, old implementation dates, and some terminology that is being updated to reflect current practice and for consistency with the regulatory guides.

#### *Identification and Analysis of Alternative Approaches to the Problem*

##### Option 1—Conduct a Rulemaking That Would Address the Regulatory Problems Described Above

The final rule will revise the timing to complete the Material Balance Reports and Physical Inventory Listing Reports to coincide with a facility's physical inventory, except for Category I licensees. The final rule will also provide additional time to complete the reports, except for a licensee who is reporting under part 75. These changes will provide most licensees with additional flexibility and reduce the regulatory burden. The final rule will require that the Material Balance Reports and Physical Inventory Listing Reports be filed within 60 days of the beginning of the physical inventory. The majority of licensees are only required to conduct an annual physical inventory (the exceptions being Category I and II facilities) and will, therefore, file the reports once a year instead of twice a year. This will reduce the burden on industry in preparing the reports by about half. Category I licensees will continue to submit reports within 30 days of the end of the reporting period (March 31 and September 30 of each year).

This final rule will also revise the categorical exclusion covering approval of safeguards plans, move the MC&A requirements to part 74, and make the Category II requirements more risk-informed. The final rule represents the final stage of an effort that started in 1982, and will result in the movement of the remaining general MC&A requirements and the requirements for Category II facilities. The risk-informed approach is consistent with the existing MC&A regulations that apply to Category I and III facilities. In addition, the final rule will make modifications that were missed in earlier updates of the MC&A regulations, correct typographical errors, delete outdated implementation dates, clarify some definitions, and include several new definitions.

##### Option 2—No Action

One alternative to amending the regulations is to maintain the current regulations without change. The advantages of the no action alternative is that the resources expended on the rulemaking would be conserved. Further, there is no urgency to make the changes to the Category II requirements because there are currently no active Category II licensees. The current system has worked reasonably well, and the changes to consolidate the MC&A requirements in part 74 may be desirable, but not necessary. The disadvantages of the no action alternative is that the identified regulatory problems would not be addressed. The regulatory burden reductions to be gained for most licensees by changing the timing and frequency for submittal of the Material Balance Reports and the Physical Inventory Listing Reports would not be achieved. In addition, the location of the MC&A requirements in both part 70 and part 74 can cause confusion, particularly for a licensee who refers to the general requirements in part 70. Consolidation of domestic MC&A requirements would not occur. The requirements for Category II facilities would remain more stringent than the requirements for Category I facilities.

#### *Estimation and Evaluation of Values and Impacts*

The principal purpose of the Material Balance Report and the Physical Inventory Listing Report is the periodic reconciliation of licensee records with the records in the NMMSS. A secondary purpose is the use of these records to satisfy the requirement of the US/IAEA Safeguards Agreement to provide an annual Material Balance Report for

facilities selected under the Agreement or associated Protocol.

The final rule modifies the regulations to require the Material Balance Report and the Physical Inventory Listing Report at the time of a physical inventory, except for Category I licensees. The final rule will require the reports to be completed within 60 days of the beginning of the physical inventory for independent spent fuel storage installations, reactors, and Category II and III facilities. This modification does not affect licensees reporting under part 75. Because most licensees conduct annual inventories, the reporting burden will be reduced. Reconciliation once a year instead of twice a year does not appear to be a problem for most licensees because the number of transactions is such that reconciliation of records would be manageable. In the case of the gaseous diffusion plants (GDPs) and their large number of transactions, reconciliation could be more difficult. This change does not preclude the GDPs from continuing to request monthly summaries from the NMMSS and reconciling its records with the NMMSS on a bimonthly basis, which is the current practice. One Material Balance Report and Physical Inventory Listing Report per year at the time of the physical inventory still provides for adequate safeguards for Category III facilities. In addition to reducing the regulatory burden on a licensee, the change will enhance the efficiency of the NMMSS.

Licensees are currently required to submit the semiannual Material Balance Reports and Physical Inventory Listing Reports within 30 days of March 31 and September 30 of each year. The preestablished timing of the submittals has two drawbacks. Specifically, the reports rarely coincide with a physical inventory, and the NMMSS contractor receives all of the reports for a given period simultaneously. The data from a physical inventory is significantly more meaningful than the book values reported during the interim periods. Staggering the submittals should benefit the NMMSS contractor, as not all licensees conduct inventories at the same time. Requirements for the NMMSS contractor would likely be spread more evenly throughout the year. By modifying the requirement to stipulate that the Material Balance Report and Physical Inventory Listing Report shall be submitted at the time of the physical inventory, these problems could be alleviated, and the data from the reports would be more meaningful.

Another consideration is whether there would be an adverse impact on

meeting IAEA safeguards requirements. Under the terms of the US/IAEA Safeguards Agreement and § 75.35, only one Material Balance Report and Physical Inventory Listing Report is required per year. Consequently, there would be no adverse impact.

As the final rule will tie submittal of the reports to the physical inventory, the majority of licensees will only need to submit the reports once a year instead of twice a year. This will result in reducing the industry burden for preparing and filing the Material Balance Report and the Physical Inventory Listing Reports by about half. The Material Balance Reports are filed using DOE/NRC form 742. The burden for preparation and submission of each DOE/NRC form 742 is estimated to be 45 minutes. There are currently about 200 licensees who submit two forms per year. With the submittal of only one report per year for 198 licensees, the burden is reduced by about 149 hours. The Physical Inventory Listing Reports are filed on DOE/NRC form 742C. The burden for preparing this form is 6 hours. With about 178 licensees submitting the form annually, the total burden reduction is 1068 hours per year. Because some licensees are also required to submit DOE/NRC form 742 to cover foreign origin source material, the number of licensees required to submit NRC form 742 is higher than the number submitting DOE/NRC form 742C.

The burden on the NRC staff will also be reduced because there will be fewer reports to review. NRC review time is approximately 5 minutes per report. With a reduction of 376 reports per year, NRC staff would save about 31 hours per year. In addition, the NRC staff receives five to eight requests per year from licensees who are asking for more time to file the reports. With the additional time being provided for filing the reports, the NRC staff does not expect to receive any requests in the future. The applicant will save the effort necessary in preparing the request, and the staff will save time in reviewing and approving the request.

The rulemaking will also result in the consolidation of the MC&A requirements in part 74 and adoption of more risk-informed regulations for Category II facilities. These modifications will enhance the regulatory process by providing any future Category II licensees a better understanding of the procedures and requirements for MC&A. The principal cost for this action would be the modest expenditure of NRC staff resources to issue this rulemaking. However, there are no currently active Category II

licensees that would benefit from the revised regulations for Category II facilities. Another advantage is that domestic MC&A requirements would be consolidated and would provide a graded, risk-informed approach to MC&A regulation. In addition, the existing typographical errors, outdated terminology, and old implementation dates would be corrected.

#### *Presentation of Results*

The recommended action is to adopt the first option because it will reduce the burden on licensees in preparing and filing their Material Balance Reports and Physical Inventory Listing Reports. The process will become more efficient, and the industry burden of producing the reports will be reduced by approximately 1,217 staff-hours. In addition to reducing unnecessary regulatory burden on licensees, the changes will enhance the operational efficiency of the NMMSS contractor by spreading the report submittals evenly throughout the year. This change will not preclude the gaseous diffusion plants with their large number of transactions from continuing to request monthly summaries from the NMMSS to reconcile their records. The final rule will also consolidate the MC&A requirements in part 74 and adopt more risk-informed regulations for Category II facilities. These modifications should enhance the regulatory process by providing any future Category II licensee a better understanding of the procedures and requirements for MC&A. The principal cost for this action would be the modest expenditure of NRC staff resources to issue this rulemaking. The total cost of this rulemaking to the NRC is estimated at 1.2 FTE. The total savings to the industry is about 1,217 hours per year. The action is considered to be cost beneficial to licensees and will improve the operational efficiency of the NMMSS contractor. Adequate safeguards would be maintained. Consequently, the Commission believes public confidence would not be adversely affected by this rulemaking.

#### *Decision Rationale*

Based on the discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. This rulemaking will save both NRC staff and licensee resources. No other available alternative is believed to be as satisfactory. Thus, this action is recommended.

### Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The majority of companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards adopted by the NRC (10 CFR 2.810).

### Backfit Analysis

The NRC has determined that the backfit rule (§§ 50.109, 70.76, 72.62, or 76.76) does not apply to this final rule because these amendments do not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

### Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

### List of Subjects

#### 10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

#### 10 CFR Part 61

Criminal penalties, Low-level waste, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

#### 10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

#### 10 CFR Part 72

Administrative practice and procedures, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

#### 10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

#### 10 CFR Part 74

Accounting, Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Special nuclear material.

#### 10 CFR Part 75

Criminal penalties, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

#### 10 CFR Part 76

Certification, Criminal penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Special nuclear material, Uranium enrichment by gaseous diffusion.

#### 10 CFR Part 150

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 51, 61, 70, 72, 73, 74, 75, 76, and 150.

### PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

1. The authority citation for part 51 continues to read as follows:

**Authority:** Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842). Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, title II, 92 Stat. 3033–3041; and sec. 193, Pub. L. 101–575, 104 Stat. 2835, (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97–425,

96 Stat. 2232, 2241, and sec. 148, Pub. L. 100–203, 101 Stat. 1330–223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also under Nuclear Waste Policy Act of 1982, sec. 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

2. In § 51.22, paragraph (c)(12) is revised to read as follows:

#### § 51.22 Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review.

\* \* \* \* \*

(c) \* \* \*

(12) Issuance of an amendment to a license implementing any requirement of this chapter relating solely to safeguards matters (*i.e.*, protection against sabotage or loss or diversion of special nuclear material), or issuance of an approval of a safeguards plan (or a revision of a safeguards plan) submitted pursuant to a requirement of any part of this chapter, provided that the amendment or approval does not involve any significant construction impacts. These amendments and approvals are confined to:

- (i) Organizational and procedural matters;
- (ii) Modifications to systems used for security and/or materials accountability;
- (iii) Administrative changes; and
- (iv) Review and approval of transportation routes pursuant to 10 CFR 73.37.

\* \* \* \* \*

### PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

3. The authority citation for part 61 continues to read as follows:

**Authority:** Secs. 53, 57, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851) and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

4. In § 61.80, paragraph (g) is revised to read as follows:

#### § 61.80 Maintenance of records, reports, and transfers.

\* \* \* \* \*

(g) Each licensee shall comply with the safeguards reporting requirements of §§ 30.55, 40.64, 74.13, and 74.15 of this chapter if the quantities or activities of materials received or transferred exceed

the limits of these sections. Inventory reports required by these sections are not required for materials after disposal.

\* \* \* \* \*

**PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL**

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

**Authority:** Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 193, 104 Stat. 2835 as amended by Pub. L. 104-134, 110 Stat. 1321, 1321-349 (42 U.S.C. 2243).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.81 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.82 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

6. In § 70.8, paragraphs (b) and (c) are revised to read as follows:

**§ 70.8 Information collection requirements: OMB approval.**

\* \* \* \* \*

(b) The approved information collection requirements contained in this part appear in §§ 70.9, 70.17, 70.19, 70.20a, 70.20b, 70.21, 70.22, 70.24, 70.25, 70.32, 70.33, 70.34, 70.38, 70.39, 70.42, 70.50, 70.51, 70.52, 70.59, 70.61, 70.62, 70.64, 70.65, 70.72, 70.73, 70.74, and Appendix A.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved are as follows:

(1) In § 70.21, form N-71 is approved under control number 3150-0056.

(2) In § 70.38, NRC form 314 is approved under control number 3150-0028.

7. In § 70.19, the introductory text of paragraph (c) is revised to read as follows:

**§ 70.19 General license for calibration or reference sources.**

\* \* \* \* \*

(c) The general license in paragraph (a) of this section is subject to the provisions of §§ 70.32, 70.50, 70.55, 70.56, 70.61, 70.62, and 70.71; the provisions of §§ 74.11, and 74.19 of this chapter; and to the provisions of parts 19, 20, and 21 of this chapter. In addition, persons who receive title to, own, acquire, deliver, receive, possess, use or transfer one or more calibration or reference sources pursuant to this general license:

\* \* \* \* \*

8. In § 70.20a, paragraph (a) is revised to read as follows:

**§ 70.20a General license to possess special nuclear material for transport.**

(a) A general license is hereby issued to any person to possess formula quantities of strategic special nuclear material of the types and quantities subject to the requirements of §§ 73.20, 73.25, 73.26, and 73.27 of this chapter, and irradiated reactor fuel containing material of the types and quantities subject to the requirements of § 73.37 of this chapter, in the regular course of carriage for another or storage incident thereto. Carriers generally licensed under § 70.20b are exempt from the requirements of this section. Carriers of irradiated reactor fuel for the United States Department of Energy are also exempt from the requirements of this section. The general license is subject to the applicable provisions of §§ 70.7(a) through (e), 70.32(a) and (b), and §§ 70.42, 70.52, 70.55, 70.61, 70.62, 70.71, and 10 CFR 74.11.

\* \* \* \* \*

9. In § 70.22, paragraph (b) is revised to read as follows:

**§ 70.22 Contents of applications.**

\* \* \* \* \*

(b) Each application for a license to possess special nuclear material, to possess equipment capable of enriching uranium, to operate an uranium enrichment facility, to possess and use at any one time and location special nuclear material in a quantity exceeding one effective kilogram, except for applications for use as sealed sources and for those uses involved in the operation of a nuclear reactor licensed pursuant to part 50 of this chapter and those involved in a waste disposal operation, must contain a full description of the applicant's program for control and accounting of such special nuclear material or enrichment equipment that will be in the applicant's possession under license to show how compliance with the requirements of §§ 74.31, 74.33, 74.41,

or 74.51 of this chapter, as applicable, will be accomplished.

\* \* \* \* \*

10. In § 70.23, paragraph (a)(6) is revised to read as follows:

**§ 70.23 Requirements for the approval of applications.**

(a) \* \* \*

(6) Where the applicant is required to submit a summary description of the fundamental material controls provided in his procedures for the control of and accounting for special nuclear material pursuant to § 70.22 (b), the applicant's proposed controls are adequate;

\* \* \* \* \*

11. In § 70.32, paragraphs (c)(1)(i), (ii), and (iii) are revised to read as follows:

**§ 70.32 Conditions of licenses.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) The program for control and accounting of uranium source material at an uranium enrichment facility and special nuclear material at all applicable facilities as implemented pursuant to § 70.22(b), or §§ 74.31(b), 74.33(b), 74.41(b), or 74.51(c) of this chapter, as appropriate;

(ii) The measurement control program for uranium source material at an uranium enrichment facility and for special nuclear material at all applicable facilities as implemented pursuant to §§ 74.31(b), 74.33(b), 74.45(c), or 74.59(e) of this chapter, as appropriate; and

(iii) Other material control procedures as the Commission determines to be essential for the safeguarding of uranium source material at an uranium enrichment facility or of special nuclear material and providing that the licensee shall make no change that would decrease the effectiveness of the material control and accounting program implemented pursuant to § 70.22(b), or §§ 74.31(b), 74.33(b), 74.41(b), or 74.51(c) of this chapter, and the measurement control program implemented pursuant to §§ 74.31(b), 74.33(b), 74.41(b), or 74.59(e) of this chapter without the prior approval of the Commission. A licensee desiring to make changes that would decrease the effectiveness of its material control and accounting program or its measurement control program shall submit an application for amendment to its license pursuant to § 70.34.

\* \* \* \* \*

12. Section 70.51 is revised to read as follows:



**§ 70.51 Records requirements.**

(a) Before license termination, licensees shall forward the following records to the appropriate NRC Regional Office:

(1) Records of disposal of licensed material made under 10 CFR 20.2002 (including burials authorized before January 28, 1981<sup>1</sup>), 20.2003, 20.2004, 20.2005;

(2) Records required by 10 CFR 20.2103(b)(4); and

(3) Records required by § 70.25(g).

(b) If licensed activities are transferred or assigned in accordance with § 70.32(a)(3), the licensee shall transfer the following records to the new licensee and the new licensee will be responsible for maintaining these records until the license is terminated:

(1) Records of disposal of licensed material made under 10 CFR 20.2002 (including burials authorized before January 28, 1981<sup>1</sup>), 20.2003, 20.2004, 20.2005;

(2) Records required by 10 CFR 20.2103(b)(4); and

(3) Records required by § 70.25(g).

(c)(1) Records which must be maintained pursuant to this part may be the original or a reproduced copy, or microform if the reproduced copy or microform is duly authenticated by authorized personnel, and the microform is capable of producing a clear and legible copy after storage for the period specified by Commission regulations. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

(2) If there is a conflict between the Commission's regulations in this part, license condition, or other written Commission approval or authorization pertaining to the retention period for the same type of record, the retention period specified in the regulations in this part for these records shall apply unless the Commission, pursuant to § 70.14, has granted a specific exemption from the record retention requirements specified in the regulations in this part.

<sup>1</sup> A previous § 20.304 permitted burial of small quantities of licensed materials in soil before January 28, 1981, without specific Commission authorization. See § 20.304 contained in the 10 CFR, parts 0 to 199, edition revised as of January 1, 1981.

13. Section 70.52 is revised to read as follows:

**§ 70.52 Reports of accidental criticality.**

(a) Each licensee shall notify the NRC Operations Center<sup>1</sup> within one hour after discovery of any case of accidental criticality.

(b) This notification must be made to the NRC Operations Center via the Emergency Notification System if the licensee is party to that system. If the Emergency Notification System is inoperative or unavailable, the licensee shall make the required notification via commercial telephonic service or other dedicated telephonic system or any other method that will ensure that a report is received by the NRC Operations Center within one hour.

**§ 70.53 [Removed]**

14. Section 70.53 is removed.

**§ 70.54 [Removed]**

15. Section 70.54 is removed.

**§ 70.57 [Removed]**

16. Section 70.57 is removed.

**§ 70.58 [Removed]**

17. Section 70.58 is removed.

## PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

18. The authority citation for part 72 continues to read as follows:

**Authority:** Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102-486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97-425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100-203, 101 Stat. 1330-232, 1330-236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100-203,

<sup>1</sup> Commercial telephone number of the NRC Operations Center is (301) 816-5100.

101 Stat. 1330-235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

19. In § 72.76, paragraph (a) is revised to read as follows:

**§ 72.76 Material status reports.**

(a) Except as provided in paragraph (b) of this section, each licensee shall complete in computer-readable format and submit to the Commission a Material Balance Report and a Physical Inventory Listing Report in accordance with instructions (NUREG/BR-0007 and NMMSS Report D-24 "Personal Computer Data Input for NRC Licensees"). Copies of these instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Nuclear Security, Washington, DC 20555-0001. These reports provide information concerning the special nuclear material possessed, received, transferred, disposed of, or lost by the licensee. Each report must be submitted within 60 days of the beginning of the physical inventory required by § 72.72(b). The Commission may, when good cause is shown, permit a licensee to submit Material Balance Reports and Physical Inventory Listing Reports at other times. The Commission's copy of this report must be submitted to the address specified in the instructions. These prescribed computer-readable forms replace the DOE/NRC forms 742 and 742C which have been previously submitted in paper form.

\* \* \* \* \*

## PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

20. The authority citation for part 73 continues to read as follows:

**Authority:** Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99-399, 100 Stat. 876 (42 U.S.C. 2169).

21. In § 73.67, paragraph (e)(2)(ii) is revised to read as follows:

**§ 73.67 Licensee fixed site and in-transit requirements for the physical protection of special nuclear material of moderate and low strategic significance.**

\* \* \* \* \*

- (e) \* \* \*
- (2) \* \* \*

(ii) Notify the shipper of receipt of the material as required in § 74.15 of this chapter, and

\* \* \* \* \*

**PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL**

22. The authority citation for part 74 continues to read as follows:

**Authority:** Secs. 53, 57, 161, 182, 183, 68 Stat. 930, 932, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2077, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

23. In § 74.1, paragraph (a) is revised to read as follows:

**§ 74.1 Purpose.**

(a) This part has been established to contain the requirements for the control and accounting of special nuclear material at fixed sites and for documenting the transfer of special nuclear material. General reporting requirements as well as specific requirements for certain licensees possessing special nuclear material of low strategic significance, special nuclear material of moderate strategic significance, and formula quantities of strategic special nuclear material are included. Requirements for the control and accounting of source material at enrichment facilities are also included.

\* \* \* \* \*

24. Section 74.2 is revised to read as follows:

**§ 74.2 Scope.**

(a) The general reporting and recordkeeping requirements of subpart B of this part apply to each person licensed pursuant to this chapter who possess special nuclear material in a quantity greater than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof; or who transfers or receives a quantity of special nuclear material of 1 gram or more of contained uranium-235, uranium-233, or plutonium. The general reporting and recordkeeping requirements of subpart B of this part do not apply to licensees whose MC&A reporting and recordkeeping requirements are covered by §§ 72.72, 72.76, and 72.78 of this chapter.

(b) In addition, specific control and accounting requirements are included in subparts C, D, and E for certain licensees who:

- (1) Possess and use formula quantities of strategic special nuclear material;
- (2) Possess and use special nuclear material of moderate strategic significance;
- (3) Possess and use special nuclear material of low strategic significance; or
- (4) Possess uranium source material and equipment capable of producing enriched uranium.

(c) As provided in part 76 of this chapter, the regulations of this part establish procedures and criteria for material control and accounting for the issuance of a certificate of compliance or the approval of a compliance plan.

25. In § 74.4, definition for “Removals” is removed; the definitions of “Category IA material” and “Inventory difference (ID)” are revised; and the definitions for “Beginning inventory (BI),” “Plant,” “Removals from inventory,” and “Removals of material from process” are added in alphabetical order to read as follows:

**§ 74.4 Definitions.**

\* \* \* \* \*

Beginning inventory (BI) means the book inventory quantity at the beginning of an inventory period, and is the reconciled physical inventory entered into the books as an adjusted inventory at the completion of the prior inventory period.

\* \* \* \* \*

Category IA material means SSNM directly useable in the manufacture of a nuclear explosive device, except if:

- (1) The dimensions are large enough (at least two meters in one dimension, greater than one meter in each of two dimensions, or greater than 25cm in each of three dimensions) to preclude hiding the item on an individual;
- (2) The total weight of an encapsulated item of SSNM is such that it cannot be carried inconspicuously by one person (*i.e.*, at least 50 kilograms gross weight); or
- (3) The quantity of SSNM (less than 0.05 formula kilograms) in each container requires protracted diversions to accumulate five formula kilograms.

\* \* \* \* \*

Inventory difference (ID) means the arithmetic difference obtained by subtracting the quantity of SNM tabulated from a physical inventory from the book inventory quantity. Book inventory quantity is equivalent to the beginning inventory (BI) plus additions to inventory (A) minus removals from inventory (R), while the physical

inventory quantity is the ending inventory (EI) for the material balance period in question (as physically determined). Thus mathematically,  $ID = (BI + A - R) - EI$  or  $ID = BI + A - R - EI$

\* \* \* \* \*

Plant means a set of processes or operations (on the same site, but not necessarily all in the same building) coordinated into a single manufacturing, R&D, or testing effort. A scrap recovery operation, or an analytical laboratory, serving both onsite and offsite customers (or more than one onsite manufacturing effort) should be treated as a separate plant.

\* \* \* \* \*

Removals from inventory means measured quantities of special nuclear material contained in:

- (1) Shipments;
- (2) Waste materials transferred to an onsite holding account via a DOE/NRC Form 741 transaction;
- (3) Measured discards transported offsite; and
- (4) Effluents released to the environment.

Removals of material from process (or removals from process) means measured quantities of special nuclear material contained in:

- (1) Effluents released to the environment;
- (2) Previously unencapsulated materials that have been encapsulated as sealed sources;
- (3) Waste materials that will not be subject to further onsite processing and which are under tamper-safing;
- (4) Ultimate product placed under tamper-safing; and
- (5) Any materials (not previously designated as removals from process) shipped offsite.

\* \* \* \* \*

26. In § 74.8, paragraph (b) is revised to read as follows:

**§ 74.8 Information collection requirements: OMB approval.**

\* \* \* \* \*

(b) The approved information collection requirements contained in this part appear in §§ 74.11, 74.13, 74.15, 74.17, 74.19, 74.31, 74.33, 74.41, 74.43, 74.45, 74.51, 74.57, and 74.59.

\* \* \* \* \*

27. The heading of subpart B is revised to read as follows:

**Subpart B—General Reporting and Recordkeeping Requirements**

28. Section 74.13 is revised to read as follows:

**§ 74.13 Material status reports.**

(a) Each licensee, including nuclear reactor licensees as defined in §§ 50.21 and 50.22 of this chapter, authorized to possess at any one time and location special nuclear material in a quantity totaling more than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, shall complete and submit, in computer-readable format Material Balance Reports concerning special nuclear material that the licensee has received, produced, possessed, transferred, consumed, disposed of, or lost. This prescribed computer-readable report replaces the DOE/NRC form 742 which has been previously submitted in paper form. The Physical Inventory Listing Report must be submitted with each Material Balance Report. This prescribed computer-readable report replaces the DOE/NRC form 742C which has been previously submitted in paper form. Each licensee shall prepare and submit the reports described in this paragraph in accordance with instructions (NUREG/BR-0007 and NMMS Report D-24 "Personal Computer Data Input for NRC Licensees"). Copies of these instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Nuclear Security, Washington, DC 20555-0001. Each licensee subject to the requirements of § 74.51 shall compile a report as of March 31 and September 30 of each year and file it within 30 days after the end of the period covered by the report. All other licensees subject to this requirement shall submit a report within 60 calendar days of the beginning of the physical inventory required by §§ 74.19(c), 74.31(c)(5), 74.33(c)(4), or 74.43(c)(6). The Commission may permit a licensee to submit the reports at other times for good cause.

(b) Any licensee who is required to submit routine Material Status Reports pursuant to § 75.35 of this chapter (pertaining to implementation of the US/IAEA Safeguards Agreement) shall prepare and submit these reports only as provided in that section (instead of as provided in paragraph (a) of this section).

29. Section 74.17 is revised to read as follows:

**§ 74.17 Special nuclear material physical inventory summary report.**

(a) Each licensee subject to the requirements of §§ 74.31 or 74.33 of this part shall submit a completed Special Nuclear Material Physical Inventory Summary Report on NRC Form 327 not later than 60 calendar days from the start of each physical inventory required

by §§ 74.31(c)(5) or 74.33(c)(4). The licensee shall report the physical inventory results by plant and total facility to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

(b) Each licensee subject to the requirements of § 74.41(a) of this part shall submit a completed Special Nuclear Material Physical Inventory Summary Report on NRC form 327 not later than 60 calendar days from the start of each physical inventory required by § 74.43(c)(7). The licensee shall report the physical inventory results by plant and total facility to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

(c) Each licensee subject to the requirements of § 74.51 shall submit a completed Special Nuclear Material Physical Inventory Summary Report on NRC form 327 not later than 45 calendar days from the start of each physical inventory required by § 74.59(f). The licensee shall report the physical inventory results by plant and total facility to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

30. A new § 74.19 is added to read as follows:

**§ 74.19 Recordkeeping**

(a) Licensees subject to the recordkeeping requirements of §§ 74.31, 74.33, 74.43, or 74.59 of this part are exempt from the requirements of paragraphs (a)(1) through (4) of this section. Otherwise:

(1) Each licensee shall keep records showing the receipt, inventory (including location and unique identity), acquisition, transfer, and disposal of all special nuclear material in its possession regardless of its origin or method of acquisition.

(2) Each record relating to material control or material accounting that is required by the regulations in this chapter or by license condition must be maintained and retained for the period specified by the appropriate regulation or license condition. If a retention period is not otherwise specified by regulation or license condition, the licensee shall retain the record until the Commission terminates the license that authorizes the activity that is subject to the recordkeeping requirement.

(3) Each record of receipt, acquisition, or physical inventory of special nuclear material that must be maintained pursuant to paragraph (a)(1) of this section must be retained as long as the

licensee retains possession of the material and for 3 years following transfer or disposal of the material.

(4) Each record of transfer of special nuclear material to other persons must be retained by the licensee who transferred the material until the Commission terminates the license authorizing the licensee's possession of the material.

(b) Each licensee that is authorized to possess special nuclear material in a quantity exceeding one effective kilogram at any one time shall establish, maintain, and follow written material control and accounting procedures that are sufficient to enable the licensee to account for the special nuclear material in its possession under license. The licensee shall retain these procedures until the Commission terminates the license that authorizes possession of the material and retain any superseded portion of the procedures for 3 years after the portion is superseded.

(c) Other than licensees subject to §§ 74.31, 74.33, 74.41, or 74.51, each licensee who is authorized to possess special nuclear material, at any one time and site location, in a quantity greater than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, shall conduct a physical inventory of all special nuclear material in its possession under license at intervals not to exceed 12 months.

The results of these physical inventories need not be reported to the Commission, but the licensee shall retain the records associated with each physical inventory until the Commission terminates the license that authorized the possession of special nuclear material.

(d) Records that must be maintained pursuant to this part may be the original or a reproduced copy or a microform if the reproduced copy or microform is duly authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after storage for the period specified by Commission regulations. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, or specifications must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

31. In § 74.31, paragraphs (b) and (c)(4) are revised as follows:

**§ 74.31 Nuclear material control and accounting for special nuclear material of low strategic significance.**

\* \* \* \* \*

(b) Implementation: Each applicant for a license, and each licensee that, upon application for modification of its license, would become newly subject to the performance objectives of paragraph (a) of this section, shall submit a fundamental nuclear material control (FNMC) plan describing how the requirements of paragraph (c) of this section will be met. The FNMC plan shall be implemented when a license is issued or modified to authorize the activities being addressed in paragraph (a) of this section, or by the date specified in a license condition.

(c) \* \* \*

(4) In each inventory period, control total material control and accounting measurement uncertainty so that twice its standard error is less than the greater of 9,000 grams of U-235 or 0.25 percent of the active inventory, and assure that any measurement performed under contract is controlled so that the licensee can satisfy this requirement;

\* \* \* \* \*

#### Subpart D—Special Nuclear Material of Moderate Strategic Significance

32. Sections 74.41, 74.43, and 74.45 are added to subpart D to read as follows:

##### § 74.41 Nuclear material control and accounting for special nuclear material of moderate strategic significance.

(a) General performance objectives. Each licensee who is authorized to possess special nuclear material (SNM) of moderate strategic significance or SNM in a quantity exceeding one effective kilogram of strategic special nuclear material in irradiated fuel reprocessing operations other than as sealed sources and to use this material at any site other than a nuclear reactor licensed pursuant to part 50 of this chapter; or as reactor irradiated fuels involved in research, development, and evaluation programs in facilities other than irradiated fuel reprocessing plants; or an operation involved with waste disposal, shall establish, implement, and maintain a Commission-approved material control and accounting (MC&A) system that will achieve the following performance objectives:

- (1) Maintain accurate, current, and reliable information on, and confirm, the quantities and locations of SNM in the licensee's possession;
- (2) Conduct investigations and resolve any anomalies indicating a possible loss of special nuclear material;
- (3) Permit rapid determination of whether an actual loss of a significant quantity of SNM has occurred, with significant quantity being either:

(i) More than one formula kilogram of strategic SNM; or

(ii) 10,000 grams or more of uranium-235 contained in uranium enriched up to 20.00 percent.

(4) Generate information to aid in the investigation and recovery of missing SNM in the event of an actual loss.

(b) Implementation schedule. Each applicant for a license, and each licensee that, upon application for modification of its license, would become newly subject to the requirements of paragraph (a) of this section shall:

(1) Submit a fundamental nuclear material control (FNMC) plan describing how the performance objectives of § 74.41(a) will be achieved, and how the system capabilities required by § 74.41(c) will be met; and

(2) Implement the NRC-approved FNMC plan submitted pursuant to paragraph (b)(1) of this section upon the Commission's issuance or modification of a license or by the date specified in a license condition.

(c) System capabilities. To achieve the performance objectives specified in § 74.41(a), the MC&A system must include the capabilities described in §§ 74.43 and 74.45, and must incorporate checks and balances that are sufficient to detect falsification of data and reports that could conceal diversion of SNM by:

- (1) A single individual, including an employee in any position; or
- (2) Collusion between two individuals, one or both of whom have authorized access to SNM.

##### § 74.43 Internal controls, inventory, and records.

(a) *General.* Licensees subject to § 74.41 shall maintain the internal control, inventory, and recordkeeping capabilities required in paragraphs (b), (c), and (d) of this section.

(b) Internal controls.

(1) A management structure shall be established, documented, and maintained that assures:

(i) Clear overall responsibility for material control and accounting (MC&A) functions;

(ii) Independence from production and manufacturing responsibilities; and

(iii) Separation of key responsibilities.

(2) The overall planning, coordination, and administration of the MC&A functions for special nuclear material (SNM) shall be vested in a single individual at an organizational level sufficient to assure independence of action and objectiveness of decisions.

(3) The licensee shall provide for the adequate review, approval, and use of written MC&A procedures that are

identified in the approved FNMC plan as being critical to the effectiveness of the described system.

(4) The licensee shall assure that personnel who work in key positions where mistakes could degrade the effectiveness of the MC&A system are trained to maintain a high level of safeguards awareness and are qualified to perform their duties and/or responsibilities.

(5) The licensee shall establish, document, and maintain an item control program that:

(i) Provides current knowledge of SNM items with respect to identity, element and isotope content, and stored location; and

(ii) Assures that SNM items are stored and handled, or subsequently measured, in a manner such that unauthorized removal of 200 grams or more of plutonium or uranium-233 or 300 grams or more of uranium-235, as one or more whole items and/or as SNM removed from containers, will be detected.

(6) Exempted from the requirements of paragraph (b)(5) of this section are items that exist for less than 14 calendar days and licensee-identified items each containing less than 200 grams of plutonium or uranium-233 or 300 grams or more of uranium-235 up to a cumulative total of one formula kilogram of strategic SNM or 17 kilograms of uranium-235 contained in uranium enriched to 10.00 percent or more but less than 20.00 percent in the uranium-235 isotope.

(7) Conduct and document shipper-receiver comparisons for all SNM receipts, both on an individual batch basis and a total shipment basis, and ensure that any shipper-receiver difference that is statistically significant and exceeds twice the estimated standard deviation of the difference estimator and 200 grams of plutonium or uranium-233 or 300 grams of uranium-235 is investigated and resolved; and

(8) Perform independent assessments of the total MC&A system, at intervals not to exceed 18 months, that assess the performance of the system, review its effectiveness, and document management's action on prior assessment recommendations and identified deficiencies. These assessments must include a review and evaluation of any contractor who performs SNM accountability measurements for the licensee.

(c) Inventory control and physical inventories. The licensee shall:

(1) Provide unique identification for each item on inventory and maintain inventory records showing the identity,

location, and quantity of SNM for these items;

(2) Document all transfers of SNM between designated internal control areas within the licensee's site;

(3) Maintain and follow procedures for tamper-safing of containers or vaults containing SNM, if tamper-safe seals are to be used for assuring the validity of prior measurements, which include control of access to, and distribution of, unused seals and to records showing the date and time of seal application;

(4) Maintain and follow procedures for confirming the validity of prior measurements associated with unencapsulated and unsealed items on ending inventory;

(5) Maintain and follow physical inventory procedures to assure that:

(i) The quantity of SNM associated with each item on ending inventory is a measured value;

(ii) Each item on ending inventory is listed and identified to assure that all items are listed and no item is listed more than once;

(iii) Cutoff procedures for transfers and processing are established so that all quantities are inventoried and none are inventoried more than once;

(iv) Cutoff procedures for records and reports are established so that only transfers for the inventory and material balance interval are included in the records for the material balance period in question;

(v) Upon completion of the physical inventory, all book and inventory records, for total plant and individual internal control areas, are reconciled with and adjusted to the results of the physical inventory; and

(vi) Measurements will be performed for element and isotope content on all quantities of SNM not previously measured.

(6) Conduct physical inventories according to written instructions for each physical inventory which:

(i) Assign inventory duties and responsibilities;

(ii) Specify the extent to which each internal control area and process is to be shut down, cleaned out, and/or remain static;

(iii) Identify the basis for accepting previously made measurements and their limits of error; and

(iv) Designate measurements to be made for physical inventory purposes and the procedures for making these measurements.

(7) Conduct physical inventories of all possessed SNM for each plant at intervals not to exceed 9 calendar months; and

(8) Within 60 calendar days after the start of each physical inventory required by paragraph (c)(7) of this section:

(i) Calculate, for the material balance period terminated by the physical inventory, the inventory difference (ID) and its associated standard error of inventory difference (SEID) for both element and isotope;

(ii) Reconcile and adjust the book record of quantity of element and isotope content, as appropriate, to the results of the physical inventory; and

(iii) Investigate and report to the Director, Office of Nuclear Material Safety and Safeguards, any occurrence of SEID exceeding 0.125 percent of active inventory, and any occurrence of ID exceeding both three times SEID and 200 grams of plutonium or uranium-233 or 300 grams of uranium-235 contained in high enriched uranium, or 9000 grams of uranium-235 contained in low enriched uranium. The report shall include a statement of the probable reasons for the excessive inventory difference and the corrective actions taken or planned.

(d) Recordkeeping. The licensee shall:

(1) Maintain records of the receipt, shipment, disposal, and current inventory associated with all possessed SNM;

(2) Maintain records of the quantities of SNM added to and removed from process;

(3) Maintain records of all shipper-receiver evaluations associated with SNM receipts;

(4) Retain each record pertaining to receipt and disposal of SNM until the Commission terminates the license; and

(5) Establish records that will demonstrate that the performance objectives of § 74.41(a)(1) through (4), the system capabilities of paragraphs (b) and (c) of this section and § 74.45(b) and (c) have been met, and maintain these records in an auditable form, available for inspection, for at least 3 years, unless a longer retention time is specified by § 74.19(b), part 75 of this chapter, or by a specific license condition.

#### **§ 74.45 Measurements and measurement control.**

(a) *General.* Licensees subject to § 74.41 of this part shall establish and maintain the measurement and measurement control capabilities required by paragraphs (b) and (c) of this section.

(b) Measurements. The licensee shall:

(1) Establish, maintain, and use a program for the measurement of all SNM received, produced, transferred between internal control areas, on inventory, or shipped, discarded, or otherwise removed from inventory, except for:

(i) Sealed sources that have been determined by other means to contain

less than 10 grams of uranium-235, uranium-233, or plutonium each;

(ii) Samples received, transferred between internal control areas, or on inventory that have been determined by other means to contain less than 10 grams of uranium-235, uranium-233, or plutonium each;

(iii) Receipt of sealed sources, of any quantity, previously manufactured and shipped by the licensee and which are returned to the licensee, provided the unique identity and encapsulation integrity have not been compromised, and the booked receipt quantity equals the previously shipped quantity for the involved sealed sources; and

(iv) Heterogeneous scrap that cannot be accurately measured in its as received form, provided this scrap is measured after dissolution within 18 months of receipt. The after dissolution measurement must include measurement of both the resulting solution and any undissolved residues, before any co-mingling with other scrap solutions or residues.

(2) Maintain and follow a program for the development and use of written procedures that includes documented review and approval of these procedures, and any revisions thereof, before use, for:

(i) Preparing or acquiring, maintaining, storing, and using reference standards;

(ii) Calibrating measurement systems, performing bulk mass and volume measurements, conducting nondestructive assay measurements, obtaining samples, and performing laboratory analyses for element concentration and isotope abundance; and

(iii) Recording, reviewing, and reporting measurements.

(c) Measurement control. To maintain measurement quality and to estimate measurement uncertainty values, the licensee shall:

(1) Assign responsibility for planning, developing, coordinating, and administering a measurement control program to an individual who has no direct responsibility for performing measurements or for SNM processing or handling, and who holds a position at an organizational level which permits independence of action and has adequate authority to obtain all the information required to monitor and evaluate measurement quality as required by this section.

(2) Ensure that any contractor who performs MC&A measurements services conforms with applicable requirements in paragraphs (c)(5), (6), (7), (10) and (11) of this section. Conformance must include reporting by the contractor of

sufficient measurement control data to allow the licensee to calculate bias corrections and measurement limits of error.

(3) Ensure that potential sources of sampling error are identified and that samples are representative by performing process sampling tests using well characterized materials to establish or verify the applicability of utilized procedures for sampling SNM and for maintaining sample integrity during transport and storage. These sampling tests or sample integrity tests, as appropriate, shall be conducted whenever:

- (i) A new sampling procedure or technique is used, or new sampling equipment is installed;
- (ii) A sampling procedure, technique, or sampling equipment is modified to the extent that a systematic sampling error could be introduced; and
- (iii) Sample containers, sample transport methods, or sample storage conditions are changed or modified to the extent that a systematic sampling error could be introduced.

(4) Establish and maintain a measurement control program so that for each inventory period the SEID is less than 0.125 percent of the active inventory, and assure that any MC&A measurements performed under contract are controlled so that the licensee can satisfy this requirement.

(5) Generate current data on the performance of each measurement system used during each material balance period for the establishment of measured values and estimated measurement uncertainties, including estimates of bias, variance components for calibration, sampling, and repeat measurements. The program data must reflect the current process and measurement conditions existing at the time the control measurements are made.

(6) Use standards on an ongoing basis for the calibration and control of all measurement systems used for SNM accountability. Calibrations shall be repeated whenever any significant change occurs in a measurement system or when program data indicate a need for recalibration. Calibrations and control standard measurements shall be based on standards whose assigned values are traceable to certified reference standards or certified standard reference materials. Additionally, control standards shall be representative of the process material or items being measured by the measurement system in question.

(7) Conduct control measurements to provide current data for the determination of random error behavior.

On a predetermined schedule, the program shall include, as appropriate:

- (i) Replicate analyses of individual samples;
- (ii) Analysis of replicate process samples;
- (iii) Replicate volume measurements of bulk process batches;
- (iv) Replicate weight measurements of process items and bulk batches, or alternatively, the use of data generated from the replicate weighings of control standard weights as derived from the control standard program; and
- (v) Replicate NDA measurements of individual process containers (items), or alternatively, the use of data generated from the replicate measurements of NDA control standards as derived from the control standard program.

(8) Use all measurements and measurement controls generated during the current material balance period for the estimation of the SEID.

(9) Evaluate with appropriate statistical methods all measurement system data generated in paragraph (c)(5) of this section to determine significant contributors to the measurement uncertainties associated with inventory differences and shipper-receiver differences, so that if SEID exceeds the limits established in paragraph (c)(4) of this section, the cause of the excessive SEID can be identified for corrective action with respect to controlling the standard error within applicable limits.

(10) Establish and maintain a statistical control system, including control charts and formal statistical procedures, designed to monitor the quality of each measurement device or system. Control chart limits must be established to be equivalent to levels of significance of 0.05 and 0.001.

(11) Promptly investigate and take any appropriate corrective action whenever a control datum exceeds an 0.05 control limit, and whenever a control datum exceeds an 0.001 control limit, the measurement system that generated the datum shall immediately be placed out-of-service with respect to MC&A measurements until the deficiency has been corrected and the system brought into control within the 0.05 control limits.

33. In § 74.51, paragraphs (c) and (d) are revised to read as follows:

**§ 74.51 Nuclear material control and accounting for strategic special nuclear material.**

(c) *Implementation dates.* Each applicant for a license, and each licensee that, upon application for modification of a license, would become

newly subject to paragraph (a) of this section, shall submit a fundamental nuclear material control (FNMC) plan describing how the MC&A system shall satisfy the requirement of paragraph (b) of this section. The FNMC plan shall be implemented when a license is issued or modified to authorize the activities being addressed in paragraph (a) of this section, or by the date specified in a license condition.

(d) *Inventories.* Notwithstanding § 74.59(f)(1), licensees shall perform at least three bimonthly physical inventories after implementation of the NRC approved FNMC Plan and shall continue to perform bimonthly inventories until performance acceptable to the NRC has been demonstrated and the Commission has issued formal approval to perform semiannual inventories. Licensees who have prior experience with process monitoring and/or can demonstrate acceptable performance against all Plan commitments may request authorization to perform semiannual inventories at an earlier date.

34. In § 74.57, the introductory text of paragraph (c) and paragraph (f)(2) are revised to read as follows:

**§ 74.57 Alarm resolution.**

(c) Each licensee shall notify the NRC Operations Center by telephone of any MC&A alarm that remains unresolved beyond the time period specified for its resolution in the licensee's fundamental nuclear material control plan. Notification must occur within 24 hours except when a holiday or weekend intervenes in which case the notification must occur on the next scheduled workday. The licensee may consider an alarm to be resolved if:

- (f) \* \* \*
- (2) Within 24 hours, the licensee shall notify the NRC Operations Center by telephone that an MC&A alarm resolution procedure has been initiated.

35. In § 74.59, paragraphs (d)(1),(f)(1)(i) and (iii), and (h)(2)(ii) are revised to read as follows:

**§ 74.59 Quality assurance and accounting requirements.**

- (d) \* \* \*
- (1) Substantiate the plutonium element and uranium element and isotope content of all SSNM received, produced, transferred between areas of custodial responsibility, on inventory, or shipped, discarded, or otherwise removed from inventory;

(f) \* \* \*

(1) \* \* \*

(i) Calculate the inventory difference (ID); estimate the standard error of the inventory difference (SEID); and investigate and report any SEID estimate of 0.1 percent or more of active inventory, and any ID that exceeds both three times SEID and 200 grams of plutonium or uranium-233, or 300 grams of uranium-235 contained in high enriched uranium.

\* \* \* \* \*

(iii) Investigate and report to the Director, Office of Nuclear Material Safety and Safeguards, any difference that exceeds three times the standard deviation determined from the sequential analysis;

\* \* \* \* \*

(h) \* \* \*

(2) \* \* \*

(ii) Any scrap measured with a standard deviation greater than five percent of the measured amount is recovered so that the results are segregated by inventory period and recovered within six months of the end of the inventory period in which the scrap was generated except where it can be demonstrated that the scrap measurement uncertainty will not cause noncompliance with § 74.59(e)(5).

\* \* \* \* \*

**PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT**

36. The authority citation for part 75 continues to read as follows:

**Authority:** Secs. 53, 63, 103, 104, 122, 161, 68 Stat. 930, 932, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 75.4 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

37. In § 75.21, paragraph (c)(2) is revised to read as follows:

**§ 75.21 General requirements.**

\* \* \* \* \*

(c) \* \* \*

(2) Until installation information has been submitted by the licensee, the procedures shall be sufficient to document changes in the quantity of nuclear material in or at its installation. Observance of the procedures described in §§ 40.61 or 74.15 of this chapter (or the corresponding provisions of the regulations of an Agreement State) by any licensee subject thereto shall constitute compliance with this paragraph.

\* \* \* \* \*

**PART 76—CERTIFICATION OF GASEOUS DIFFUSION PLANTS**

38. The authority citation for part 76 continues to read as follows:

**Authority:** Secs. 161, 68 Stat. 948, as amended, secs. 1312, 1701, as amended, 106 Stat. 2932, 2951, 2952, 2953, 110 Stat. 1321–349 (42 U.S.C. 2201, 2297b–11, 2297f); secs. 201, as amended, 204, 206, 88 Stat. 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 234(a), 83 Stat. 444, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(a)).

Sec. 76.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sec. 76.22 is also issued under sec. 193(f), as amended, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(f)). Sec. 76.35(j) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152).

39. In § 76.113, paragraph (a) is revised to read as follows:

**§ 76.113 Formula quantities of strategic special nuclear material—Category I.**

(a) The requirements for material control and accounting for formula quantities of strategic special nuclear material (Category I) are contained in §§ 74.11, 74.13, 74.15, 74.17, 74.19, 74.51, 74.53, 74.55, 74.57, 74.59, 74.81, and 74.82 of this chapter.

\* \* \* \* \*

40. In § 76.115, paragraph (a) is revised to read as follows:

**§ 76.115 Special nuclear material of moderate strategic significance—Category II.**

(a) The requirements for material control and accounting for special nuclear material of moderate strategic significance (Category II) are contained in §§ 74.11, 74.13, 74.15, 74.17, 74.19, 74.41, 74.43, 74.45, 74.81, and 74.82 of this chapter.

\* \* \* \* \*

41. In § 76.117, paragraph (a) is revised to read as follows:

**§ 76.117 Special nuclear material of low strategic significance—Category III.**

(a) The requirements for material control and accounting for special nuclear material of low strategic significance (Category III) are contained in §§ 74.11, 74.13, 74.15, 74.17, 74.19, 74.33, 74.81, and 74.82 of this chapter. However, inventories of uranium outside of the enrichment processing equipment conducted at least every 370 days are deemed to satisfy the requirements of § 74.19(c).

\* \* \* \* \*

**PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274**

42. The authority citation for part 150 continues to read as follows:

**Authority:** Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

43. In § 150.20, the introductory text of paragraph (b) is revised to read as follows:

**§ 150.20 Recognition of Agreement State licenses.**

\* \* \* \* \*

(b) Notwithstanding any provision to the contrary in any specific license issued by an Agreement State to a person engaging in activities in a non-Agreement State, in an area of exclusive Federal jurisdiction within an Agreement State, or in offshore waters under the general licenses provided in this section, the general licenses provided in this section are subject to all the provisions of the Act, now or hereafter in effect, and to all applicable rules, regulations, and orders of the Commission including the provisions of §§ 30.7 (a) through (f), 30.9, 30.10, 30.14(d), 30.34, 30.41, and 30.51 to 30.63, inclusive, of part 30 of this chapter; §§ 40.7 (a) through (f), 40.9, 40.10, 40.41, 40.51, 40.61, 40.63 inclusive, 40.71 and 40.81 of part 40 of this chapter; §§ 70.7 (a) through (f), 70.9, 70.10, 70.32, 70.42, 70.52, 70.55, 70.56, 70.60 to 70.62 of part 70 of this chapter; §§ 74.11, 74.15, and 74.19 of part 74 of this chapter; and to the provisions of 10 CFR parts 19, 20 and 71 and subparts C through H of part 34, §§ 39.15 and 39.31 through 39.77, inclusive, of part 39 of this chapter. In addition, any person engaging in activities in non-Agreement States, in areas of exclusive Federal jurisdiction within Agreement States, or in offshore waters under the general licenses provided in this section:

\* \* \* \* \*

Dated in Rockville, Maryland, this 17th day of December, 2002.

For the Nuclear Regulatory Commission.  
**Annette Vietti-Cook,**  
*Secretary of the Commission.*  
 [FR Doc. 02-32247 Filed 12-20-02; 8:45 am]  
 BILLING CODE 7590-01-P

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

**12 CFR Parts 502, 505, 506, 516, 541, 545, 557, 559, 561, 563, 563e, 563g, and 575**

[No. 2002-65]

#### Technical Amendments

**AGENCY:** Office of Thrift Supervision, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of Thrift Supervision (OTS) is amending its regulations to incorporate a number of technical and conforming amendments. They include clarifications, updated statutory and other references, and corrections of typographical errors.

**EFFECTIVE DATE:** December 23, 2002.

**FOR FURTHER INFORMATION CONTACT:** Marilyn K. Burton, Senior Paralegal (Regulations), (202) 906-6467, or Karen A. Osterloh, Special Counsel, (202) 906-6639, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** OTS is amending its regulations to incorporate a number of technical and conforming amendments.

Consistent with section 722 of the Gramm-Leach-Bliley Act, OTS is making changes designed to make its regulations easier to understand. OTS has revised parts 541 and 561 to clearly state that the definitions in these parts apply throughout chapter V, unless another definition is specifically provided.

OTS is also making the following miscellaneous changes:

- *Part 502—Assessments and Fees.* The final rule corrects a typographical error in § 502.5.
- *Part 505—Freedom of Information Act (FOIA).* The final rule revises §§ 505.2 to 505.4, which describe the availability of materials under FOIA and the procedures for requests for records and administrative appeals. The final rule indicates that materials are available through the FOIA Office and the Public Reading Room. The final rule also provides that requests for records and administrative appeals of initial

determinations to deny records must be submitted to the FOIA Office.

- *Part 506—Information Collection Requirements under the Paperwork Reduction Act (PRA).* The final rule updates the table displaying the OMB control numbers assigned to various OTS regulations under the PRA by inserting additional references to the control numbers. See 12 CFR 506.1(b).
- *Part 516—Application Processing Guidelines and Procedures.* The final rule updates § 516.40 to include current addresses for OTS Regional Offices.

• *Part 545—Federal Savings Associations—Operations.* The final rule corrects a typographical error in § 545.74(b)(2).

• *Part 557—Deposits.* The final rule corrects a typographical error in § 557.11(b).

• *Part 559—Subordinate Organizations.* The final rule corrects a citation in § 559.3(e)(2)(ii).

• *Part 563—Savings Associations—Operations.* The final rule corrects a typographical error in § 563.146.

• *Part 563e—Community Reinvestment.* The final rule corrects a citation in Appendix A to part 563e—Ratings.

• *Parts 563g—Securities Offerings and Part 575—Mutual Holding Companies.* The final rule updates citations in §§ 563g.19 and 575.7(c)(1) and (c)(2).

#### Administrative Procedure Act; Riegle Community Development and Regulatory Improvement Act of 1994

OTS finds that there is good cause to dispense with prior notice and comment on this final rule and with the 30-day delay of effective date mandated by the Administrative Procedure Act.<sup>1</sup> OTS believes that these procedures are unnecessary and contrary to public interest because the rule merely corrects and clarifies existing provisions. Because the amendments in the rule are not substantive, these changes will not detrimentally affect savings associations.

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 provides that regulations that impose additional reporting, disclosure, or other new requirements may not take effect before the first day of the quarter following publication.<sup>2</sup> This section does not apply because this final rule imposes no additional requirements and makes only technical changes to existing regulations.

<sup>1</sup> 5 U.S.C. 553.

<sup>2</sup> Pub. L. 103-325, 12 U.S.C. 4802.

#### Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act,<sup>3</sup> the OTS Director certifies that this technical corrections regulation will not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12866

OTS has determined that this rule is not a "significant regulatory action" for purposes of Executive Order 12866.

#### Unfunded Mandates Reform Act of 1995

OTS has determined that the requirements of this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

#### List of Subjects

##### 12 CFR Part 502

Assessments, Federal home loan banks, Reporting and recordkeeping requirements, Savings associations.

##### 12 CFR Part 505

Freedom of information.

##### 12 CFR Part 506

Reporting and recordkeeping requirements.

##### 12 CFR Part 516

Administrative practice and procedure, Reporting and recordkeeping requirements, Savings associations.

##### 12 CFR Parts 541 and 561

Savings associations.

##### 12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Reporting and recordkeeping requirements, Savings associations.

##### 12 CFR Part 557

Consumer protection, Reporting and recordkeeping requirements, Savings associations.

##### 12 CFR Part 559

Reporting and recordkeeping requirements, Savings associations, Subsidiaries.

##### 12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and

<sup>3</sup> Pub. L. 96-354, 5 U.S.C. 601.



recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 563e

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 563g

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 575

Administrative practice and procedure, Capital, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision amends title 12, chapter V of the Code of Federal Regulations, as set forth below.

**PART 502—ASSESSMENTS AND FEES**

1. The authority citation for part 502 continues to read as follows:

**Authority:** 12 U.S.C. 1462a, 1463, 1467, 1467a.

2. Revise § 502.5(a) to read as follows:

**§ 502.5 Who must pay assessments and fees?**

(a) *Authority.* Section 9 of the HOLA, 12 U.S.C. 1467, authorizes the Director to charge assessments to recover the costs of examining savings associations and their affiliates, to charge fees to recover the costs of processing applications and other filings, and to charge fees to cover OTS's direct and indirect expenses in regulating savings associations and their affiliates.

\* \* \* \* \*

**PART 505—FREEDOM OF INFORMATION ACT**

3. The authority citation for part 505 continues to read as follows:

**Authority:** 5 U.S.C. 552; 12 U.S.C. 1462a, 1463, 1464.

4. Revise the second sentence of § 505.2 to read as follows:

**§ 505.2 Public Reading Room.**

\* \* \* Contact the FOIA Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, or you may visit the Public Reading Room at 1700 G Street, NW., by appointment only. \* \* \*

5. Revise § 505.3 to read as follows:

**§ 505.3 Requests for records.**

A designated official will make the initial determination under 31 CFR 1.5(g) whether to grant a request for OTS records. Requests may be mailed to: Freedom of Information Act Request, FOIA Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, or marked "FOIA" and delivered in person to the FOIA Office, 1700 G Street, NW., Washington, DC 20552. Requests may also be sent by e-mail or facsimile to the e-mail address and facsimile number in § 505.2 of this part.

6. Revise § 505.4 to read as follows:

**§ 505.4 Administrative appeal of initial determination to deny records.**

A designated official will make appellate determinations under 31 CFR 1.5(h) with respect to OTS records. Appeals by mail should be addressed to: FOIA Appeals, 1700 G Street, NW., Washington, DC 20552. Appeals may be delivered personally to FOIA Appeals, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Appeals may also be sent by e-mail or facsimile to the e-mail address and facsimile number in § 505.2 of this part.

**PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT**

7. The authority citation for part 506 continues to read as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

8. Amend § 506.1(b) by adding new entries for §§ 551.50, 551.70 through 551.100, 551.140, and 551.150, and by removing "\$ 563.1," and adding in lieu thereof "\$ 563.3" to read as follows:

**§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

\* \* \* \* \*

(b) *Display.*

12 CFR part or section where identified and described	Current OMB control No.
* * * * *	* * * * *
551.50 .....	1550-0109
551.70 through 551.100 .....	1550-0109
551.140 .....	1550-0109
551.150 .....	1550-0109
* * * * *	* * * * *
563.3 .....	1550-0027
* * * * *	* * * * *

**PART 516—APPLICATION PROCESSING PROCEDURES**

9. The authority citation for part 516 continues to read as follows:

**Authority:** 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464, 2901 *et seq.*

10. Revise § 516.40(a)(2) to read as follows:

**§ 516.40 Where do I file my application?**

(a) \* \* \*

(2) The addresses of each Regional Office and the states covered by each office are:

Region	Office address	States served
Northeast .....	Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.	Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, West Virginia
Southeast .....	Office of Thrift Supervision, 1475 Peachtree Street, N.E., Atlanta, Georgia 30309 (Mail to: P.O. Box 105217, Atlanta, Georgia 30348-5217).	Alabama, District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Maryland, Michigan, North Carolina, Puerto Rico, South Carolina, Virginia, the Virgin Islands.
Midwest .....	Office of Thrift Supervision, 225 E. John Carpenter Freeway, Suite 500, Irving, Texas 75062-2326 (Mail to: P.O. Box 619027) Dallas/Ft. Worth, Texas 75261-9027).	Arkansas, Iowa, Kansas, Louisiana, Mississippi, Missouri, Nebraska, Oklahoma, Tennessee, Texas, Wisconsin.
West .....	Office of Thrift Supervision, Pacific Plaza, 2001 Junipero Serra Boulevard, Suite 650, Daly City, California 94014-1976 (Mail to: P.O. Box 7165 San Francisco, California 94120-7165).	Alaska, Arizona, California, Colorado, Guam, Hawaii, Idaho, Montana, Nevada, New Mexico, North Dakota, Northern Mariana Islands, Oregon, South Dakota, Utah, Washington, Wyoming.

\* \* \* \* \*

**PART 541—DEFINITIONS FOR REGULATIONS AFFECTING FEDERAL SAVINGS ASSOCIATIONS**

11. The authority citation for part 541 continues to read as follows:  
**Authority:** 12 U.S.C. 1462a, 1463, 1464.  
 12. Revise § 541.1 to read as follows:

**§ 541.1 When do the definitions in this part apply?**

The definitions in this part and in 12 CFR part 561 apply throughout this chapter, unless another definition is specifically provided.

**PART 545—FEDERAL SAVINGS ASSOCIATIONS—OPERATIONS**

13. The authority citation for part 545 continues to read as follows:  
**Authority:** 12 U.S.C. 1462a, 1463, 1464, 1828.  
 14. Revise § 545.74(b)(2) to read as follows:

**§ 545.74 Securities brokerage.**  
 \* \* \* \* \*  
 (b) \* \* \*  
 (2) Payment to any employee of the association of a referral fee, bonus, or any incentive compensation, in cash or in kind, for referring any customer to the service corporation except as may be consistent with a “no-action” letter received by the association from the U.S. Securities and Exchange Commission (“SEC”), stating that the SEC will not recommend enforcement action if association employees receive the planned referral fee but do not register with a broker-dealer and the association does not register as a broker-dealer;  
 \* \* \* \* \*

**PART 557—DEPOSITS**

15. The authority citation for part 557 continues to read as follows:  
**Authority:** 12 U.S.C. 1462a, 1463, 1464.  
 16. Revise the third sentence of § 557.11(b) to read as follows:

**§ 557.11 To what extent does Federal law preempt deposit-related State laws?**  
 \* \* \* \* \*  
 (b) \* \* \* Federal savings associations may exercise deposit-related powers as authorized under federal law, including this part, without regard to state laws purporting to regulate or otherwise affect deposit activities, except to the extent provided in § 557.13. \* \* \*

**PART 559—SUBORDINATE ORGANIZATIONS**

17. The authority citation for part 559 continues to read as follows:  
**Authority:** 12 U.S.C. 1462, 1462a, 1463, 1464, 1828.

18. Revise the chart in the final sentence of § 559.3(e)(2)(ii) to read as follows:

**§ 559.3 What are the characteristics of, and what requirements apply to, subordinate organizations of Federal savings associations?**  
 \* \* \* \* \*

	Operating subsidiary	Service corporation
* * *	* * *	* * *
(e) * * *	(1) * * *	(2)(i) * * * (ii) * * * You may request OTS approval for your service corporation to engage in any other activity reasonably related to the activities of financial institutions, including the activities set forth in § 559.4(b)–(j), by filing an application in accordance with standard treatment processing procedures at part 516, subparts A and E of this chapter.
* * *	* * *	* * *

**PART 561—DEFINITIONS FOR REGULATIONS AFFECTING ALL SAVINGS ASSOCIATIONS**

19. The authority citation for part 561 continues to read as follows:  
**Authority:** 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.  
 20. Revise § 561.1 to read as follows:

**§ 561.1 When do the definitions in this part apply?**

The definitions in this part and in 12 CFR part 541 apply throughout this chapter, unless another definition is specifically provided.

**PART 563—SAVINGS ASSOCIATIONS—OPERATIONS**

21. The authority citation for part 563 continues to read as follows:  
**Authority:** 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831o, 3806; 42 U.S.C. 4106.

22. Revise the first sentence of § 563.146 to read as follows:  
**§ 563.146 Will the OTS permit my capital distribution?**  
 The OTS will review your notice or application under the review procedures in 12 CFR part 516, subpart E. \* \* \*  
 \* \* \* \* \*

**PART 563e—COMMUNITY REINVESTMENT**

23. The authority citation for part 563e continues to read as follows:  
**Authority:** 12 U.S.C. 1462a, 1463, 1464, 1467a, 1814, 1816, 1828(c), and 2901 through 2907.  
 24. Amend appendix A of part 563e by revising paragraph (e)(3)(iii) to read as follows:

**Appendix A to Part 563E—Ratings**

\* \* \* \* \*  
 (e) \* \* \*  
 (3) \* \* \*  
 (iii) If the savings association fails to meet substantially its plan goals for a satisfactory rating, OTS will rate the savings association as either “needs to improve” or “substantial noncompliance,” depending on the extent to which it falls short of its plan goals, unless the savings association elected in its plan to be rated otherwise, as provided in § 563e.27(f)(4).

**PART 563g—SECURITIES OFFERINGS**

25. The authority citation for part 563g continues to read as follows:  
**Authority:** 12 U.S.C. 1462a, 1463, 1464; 15 U.S.C. 78c(b), 78l, 78m, 78n, 78p, 78w.

**§ 563g.19 [Amended]**

26. Amend § 563g.19 by removing “§ 563.1,” and by adding in lieu thereof “§ 563.3.”

**PART 575—MUTUAL HOLDING COMPANIES**

27. The authority citation for part 575 continues to read as follows:

**Authority:** 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828, 2901.

**§ 575.7 [Amended]**

28. Amend § 575.7 by removing “§ 563.1” in paragraph (c)(1) and (c)(2) and by adding in lieu thereof “§ 563.3.”

Dated: December 17, 2002.

By the Office of Thrift Supervision

**James E. Gilleran,**

*Director.*

[FR Doc. 02–32148 Filed 12–20–02; 8:45 am]

**BILLING CODE 6720–01–P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 99–SW–80–AD; Amendment 39–12983; AD 2002–25–07]

RIN 2120–AA64

**Airworthiness Directives; Bell Helicopter Textron Canada Limited Model 206L, L–1, L–3, and L–4 Helicopters**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD) for the specified Bell Helicopter Textron Canada Limited (BHTCL) model helicopters that currently requires removing the horizontal stabilizer supports and inspecting the edges of the tailboom skins around the horizontal stabilizer openings for a crack. This amendment requires checking and inspecting the tailboom for a crack and modifying or replacing the tailboom as necessary. This amendment also provides a terminating action, incorporates a more recent alert service bulletin (ASB), and increases the compliance time for performing the inspections. This amendment is prompted by several reports of cracks found during mandatory inspections. The actions specified by this AD are intended to detect a crack in the tailboom skin and to prevent separation of the tailboom and subsequent loss of control of the helicopter.

**DATES:** Effective January 27, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 27, 2003.

**ADDRESSES:** The service information referenced in this AD may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:** A proposal to amend 14 CFR part 39 by superseding AD 99–13–12, Amendment 39–11207 (64 FR 33747, June 24, 1999) for BHTCL Model 206L, L–1, L–3, and L–4 helicopters was published in the **Federal Register** on April 19, 2000 (65 FR 20927). That action proposed inspecting the tailboom skins for a crack, replacing a cracked tailboom with a modified tailboom before further flight, and implementing recurring inspections of the modified tailboom.

A supplemental NPRM (SNPRM) was published in the **Federal Register** on August 22, 2002 (67 FR 54381) based on comments from the manufacturer and an operator stating that the proposed compliance time for modifying the tailboom should be increased. Also, the manufacturer revised the ASB and changed the suggested compliance time. The FAA reevaluated the proposed compliance time to modify the tailboom in light of the comments received and determined that an increase from 300 hours time-in-service (TIS) to 600 hours TIS is sufficient to meet the safety objectives. Also, after publishing the original proposal, a redesigned tailboom, part number (P/N) 206–033–004–181, was approved and manufactured with the required skin doubler hot-bonded in place. Therefore, installing an airworthy, redesigned tailboom, P/N 206–033–004–181, was proposed terminating action for the requirements of this AD. Since the changes expanded the scope of the original proposal, we reopened the comment period.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No

comments were received on the SNPRM or the FAA’s determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed in the SNPRM with one exception. We have changed the AD to reflect the manufacturer’s official name, which is Bell Helicopter Textron Canada Limited. That change will neither increase the economic burden nor increase the scope of the AD.

The FAA estimates that this AD will affect 1546 helicopters of U.S. registry, that it will take approximately 52 work hours per helicopter to accomplish the required actions, and that the average labor rate is \$60 per work hour. Required parts will cost approximately \$22,954. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$40,310,404, assuming all the tailbooms are replaced.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this 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) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing Amendment 39-11207 (64 FR 33747, June 24, 1999) and by adding a new airworthiness directive (AD), Amendment 39-12983, to read as follows:

**2002-25-07 Bell Helicopter Textron**

**Canada Limited:** Amendment 39-12983. Docket No. 99-SW-80-AD. Supersedes AD 99-13-12, Amendment 39-11207, Docket No. 99-SW-23-AD.

*Applicability:* Model 206L helicopters, serial numbers (S/N) 45004 through 45049, 45051 through 45153, and 46601 through 46617; Model 206L-1 helicopters, S/N 45154 through 45790; Model 206L-3 helicopters, S/

N 51001 through 51612; and Model 206L-4 helicopters, S/N 52001 through 52163, 52165 through 52212, and 52214 through 52216, with tailboom, part number (P/N) 206-033-004 all dash numbers, except P/N 206-033-004-181, installed, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters 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 (i) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair

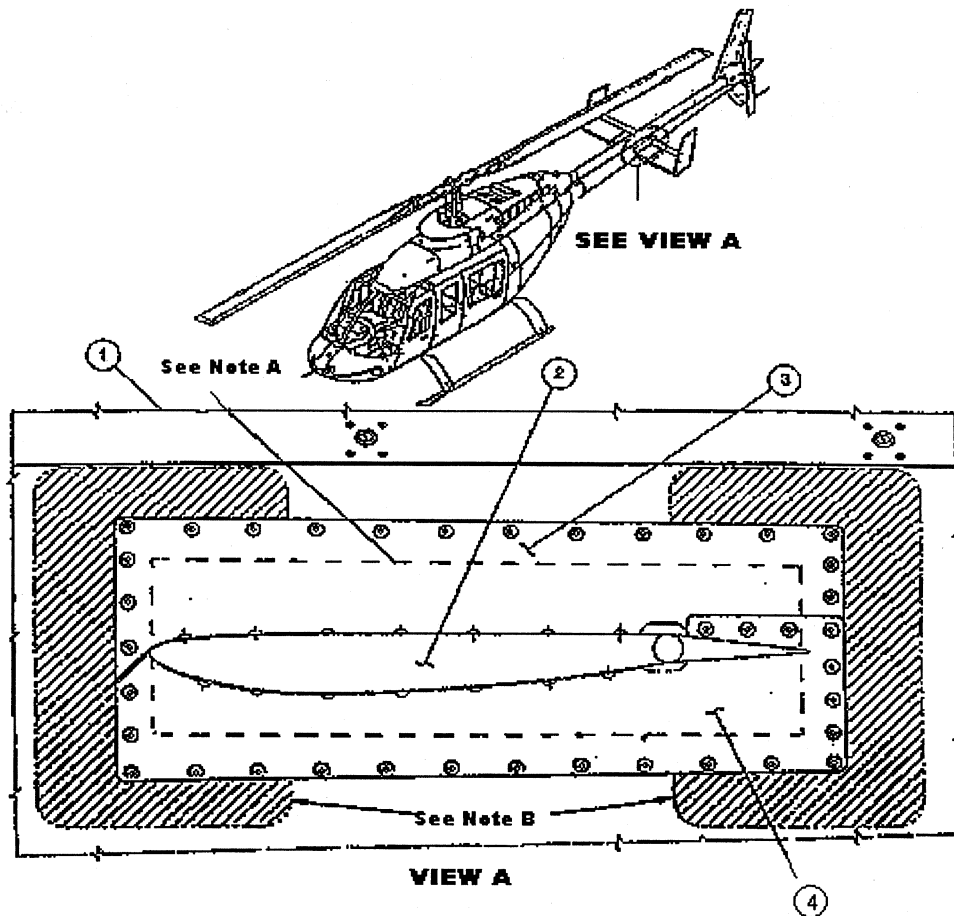
on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect a crack in the tailboom skin and to prevent separation of the tailboom from the helicopter and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight and thereafter at intervals not to exceed 10 hours time-in-service (TIS) until accomplishing a one-time fluorescent-penetrant inspection (FPI) required by paragraph (c)(2) of this AD, visually inspect for a crack in the tailboom using a 10-power or higher magnifying glass in the shaded areas as depicted in Figure 1 of this AD:

**BILLING CODE 4910-13-P**



#### LEGEND

1. Tailboom assembly
2. Horizontal stabilizer
3. Upper support
4. Lower support

#### NOTES

- A. Inspect entire edge of stabilizer opening on both sides of the tailboom.
- B. Inspect for a crack in these two areas on both sides of the tailboom

**Figure 1**

#### BILLING CODE 4910-13-C

(b) At intervals not to exceed 5 hours TIS, visually check for a crack in the tailboom in the shaded areas as depicted in Figure 1 of this AD. The visual check may be performed by an owner/operator (pilot) holding at least a private pilot certificate and must be entered

into the helicopter records showing compliance with this paragraph in accordance with 14 CFR 43.11 and 91.417(a)(2)(v).

(c) Within 50 hours TIS:

(1) Remove all four horizontal stabilizer supports, P/N 206-023-100-all dash

numbers, from the tailboom and the horizontal stabilizer.

(2) Perform a one-time FPI of the edges of the tailboom skins for any crack around the left and right horizontal stabilizer openings as shown in Figure 1 of this AD. Remove paint and primer to inspect the edges and

exterior skin surface in the skin area at least 3/4 inch around the edges of the horizontal stabilizer openings as shown in Figure 1 of this AD.

(d) At intervals not to exceed 100 hours TIS after completing the FPI:

(1) Remove all four horizontal stabilizer supports, P/N 206-023-100-all dash numbers, from the tailboom and the horizontal stabilizer.

(2) Visually inspect the entire edge of the horizontal stabilizer opening on both sides of the tailboom for any crack using a 10-power or higher magnifying glass as shown in Figure 1 of this AD.

(e) Within 600 hours TIS, inspect and modify the tailboom in accordance with the Accomplishment Instructions, Parts I, II, and III of Bell Helicopter Textron Canada Alert Service Bulletin 206L-99-115, Revision F, dated April 14, 2001 (ASB).

(f) After modifying a tailboom in accordance with paragraph (e) of this AD or installing a tailboom modified in accordance with paragraph (e) of this AD, at intervals not to exceed 1200 hours TIS, inspect the modified tailboom in accordance with the Accomplishment Instructions, Part IV, of the ASB.

(g) If a crack is found during any check or inspection required by this AD, before further flight, replace the cracked tailboom with an airworthy tailboom modified according to the requirements of paragraph (e) of this AD or with an airworthy tailboom, P/N 206-033-004-181.

**Note 2:** Modifying the tailboom in accordance with revisions before Revision F of ASB 206L-99-115 is acceptable for the modifications required by paragraph (e) of this AD.

(h) Inspecting and modifying the tailboom in accordance with paragraph (e) of this AD is terminating action for the requirements of paragraphs (a) through (d) of this AD. Installing an airworthy tailboom, P/N 206-033-004-181, constitutes terminating action for the requirements of this AD.

(i) 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, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(j) Special flight permits may be issued for a one-time flight, not to exceed 5 hours TIS and a maximum of one landing in accordance with 14 CFR 21.197 and 21.199, to operate the helicopter to a location where the requirements of this AD can be accomplished. The visual preflight check required by paragraph (b) of this AD must be accomplished before making a one-time flight.

(k) Inspecting and modifying the tailboom shall be done in accordance with the Accomplishment Instructions, Bell Helicopter Textron Alert Service Bulletin

206L-99-115, Revision F, dated April 14, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280-3391, fax (817) 280-6466. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) This amendment becomes effective on January 27, 2003.

**Note 4:** The subject of this AD is addressed in Transport Canada (Canada) AD CF-98-42R3, dated February 17, 2000.

Issued in Fort Worth, Texas, on December 9, 2002.

**David A. Downey,**

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02-31752 Filed 12-20-02; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2000-CE-60-AD; Amendment 39-12985; AD 2002-25-09]

RIN 2120-AA64

#### Airworthiness Directives; Air Tractor, Inc. Models AT-250, AT-300, AT-301, AT-302, AT-400, AT-400A, AT-401, AT-401A, AT-402, AT-402A, AT-501, AT-502, and AT-502A Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to certain Air Tractor, Inc. (Air Tractor) Models AT-250, AT-300, AT-301, AT-302, AT-400, AT-400A, AT-401, AT-401A, AT-402, AT-402A, AT-501, AT-502, and AT-502A airplanes. This AD requires you to install an overturn skid plate in the cockpit area. This AD is the result of reports of foreign material entering the cabin area during an overturn skid of the affected airplanes. The actions specified by this AD are intended to minimize the possibility of dirt or mud penetrating the cockpit in case of an aircraft overturn. Such mud and dirt penetration into the cockpit could lead to pilot asphyxia or injury.

**DATES:** This AD becomes effective on February 10, 2003.

The Director of the Federal Register approved the incorporation by reference

of certain publications listed in the regulations as of February 10, 2003.

**ADDRESSES:** You may get the service information referenced in this AD from Air Tractor, Inc., P.O. Box 485, Olney, Texas 76374. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000-CE-60-AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

#### FOR FURTHER INFORMATION CONTACT:

Andrew McAnaul, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193-0150; telephone: (817) 222-5156; facsimile: (817) 222-5960.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

*What events have caused this AD?*  
The FAA has received accident reports on Air Tractor Models AT-301 and AT-401 airplanes. The reports indicate that the aircraft skids tail first after an overturn, the windshield and curved overturn tube act as a scoop, foreign material enters the cockpit if the top of the canopy is damaged, and this foreign material then enters into the cabin area and possibly contributes to pilot deaths.

*Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Air Tractor Models AT-250, AT-300, AT-301, AT-302, AT-400, AT-400A, AT-401, AT-401A, AT-402, AT-402A, AT-501, AT-502, and AT-502A airplanes. This proposal was published in the Federal Register as a notice of proposed rulemaking (NPRM) on August 29, 2002 (67 FR 55360). The NPRM proposed to require you to install an overturn skid plate in the cockpit area. The actions specified by this proposed AD are intended to minimize the possibility of dirt or mud penetrating the cockpit in case of an aircraft overturn.*

*What is the potential impact if FAA took no action? Such mud and dirt penetration into the cockpit could lead to pilot asphyxia or injury.*

*Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:*

**Comment Issue No. 1: Remove the Air Tractor Model AT-502A Designation From the Applicability**

*What is the commenter's concern?*  
 The commenter states that the Air Tractor Model AT-502A airplanes did not start production until after serial numbers applicable to the AD. Furthermore, the commenter states skid plates were installed on all Model AT-502A airplanes during factory production. The commenter wants Air Tractor Model AT-502A airplanes removed from the applicability section of the final rule AD action.

*What is FAA's response to the concern?* We do not concur. Air Tractor confirms that there is the possibility of one Model AT-502A airplane (converted from an early production AT-503, and with one of the affected serial numbers) in operation that did not receive the skid plate installation.

We are not changing the final rule AD action based on this comment.

**Comment Issue No. 2: Correct Wording in the Summary and Related AD Section**

*What is the commenter's concern?*  
 The commenter states that the following sentence in the NPRM Summary and proposed AD paragraph 2(c) is misleading: "The proposed AD is the result of reports of foreign material entering the cabin area and contributing to accidents of the affected airplanes." The commenter states that the sentence is misleading in that it implies that entering foreign material has caused an accident and does not indicate that an accident (an overturn of the aircraft) has already occurred. The commenter wants the sentence corrected to indicate the possibility of foreign material entering the cockpit after an accident where the aircraft has overturned.

*What is FAA's response to the concern?* We agree with the commenter. The final rule AD Summary and AD paragraph 2(c) will be changed to indicate the possibility of foreign material entering the cockpit after an accident where the aircraft has overturned.

We will change the final rule AD action to incorporate these changes.

**FAA's Determination**

*What is FAA's final determination on this issue?* We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for the changes discussed above and minor editorial questions. We have determined that these changes and minor corrections:

- Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

**Cost Impact**

*How many airplanes does this AD impact?* We estimate that this AD affects 845 airplanes in the U.S. registry.

*What is the cost impact of this AD on owners/operators of the affected airplanes?* We estimate the following costs to accomplish the modification:

Labor cost	Parts cost	Total cost per airplane	Total cost U.S. operators
6 workhours × \$60 = \$360 .....	\$300	\$660	845 × \$660 = \$557,700

**Regulatory Impact**

*Does this AD impact various entities?*  
 The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

*Does this AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this 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) 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 final 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, Incorporation by Reference, Safety.

**Adoption of the Amendment**

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

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

**§ 39.13 [Amended]**

2. FAA amends § 39.13 by adding a new AD to read as follows:

**2002-25-09 Air Tractor, Inc.:** Amendment 39-12985; Docket No. 2000-CE-60-AD.

(a) *What airplanes are affected by this AD?*  
 This AD affects the following airplane models and serial numbers that are certificated in any category:

Models	Serial Nos.
AT-250, AT-300, AT-301, AT-302, AT-400, AT-400A, AT-401, AT-401A, AT-402, and AT-402A.	All through 0829.
AT-501, AT-502, and AT-502A.	All through 0147.

(b) *Who must comply with this AD?*  
 Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?*  
 The actions specified by this AD are intended to minimize the possibility of dirt or mud penetrating the cockpit in case of an aircraft overturn. Such mud and dirt penetration into the cockpit could lead to pilot asphyxia or injury.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
Install overturn skid plate, part number (P/N) 11411-1-500, or FAA-approved equivalent P/N.	Within the next 180 days after February 10, 2003 (the effective date of this AD), unless already accomplished..	In accordance with Snow Engineering Company Service Letter #97, dated March 23, 1991, Revised October 3, 2000, and the applicable maintenance manual.

(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, Fort Worth Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

**Note:** This AD applies to each airplane 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 airplanes 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 Andrew McAnaul, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193-0150; telephone: (817) 222-5156; facsimile: (817) 222-5960.

(g) *What if I need to fly the airplane 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 airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Snow Engineering Company Service Letter # 97, dated March 23, 1991, Revised October 3, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Air Tractor, Inc., P.O. Box 485, Olney, Texas 76374. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on February 10, 2003.

Issued in Kansas City, Missouri, on December 13, 2002.

**Dorenda D. Baker,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 02-31998 Filed 12-20-02; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 341

[Docket No. 76N-052G]

RIN 0910-AA01

#### **Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-The-Counter Human Use; Final Monograph for Combination Drug Products**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing a final rule in the form of a final monograph that establishes conditions under which over-the-counter (OTC) cold, cough, allergy, bronchodilator, and antiasthmatic (cough-cold) combination drug products are generally recognized as safe and effective and not misbranded as part of its ongoing review of OTC drug products. FDA is issuing this final rule after considering public comments on the agency's proposed regulation (tentative final monograph) and new data and information on OTC cough-cold combination drug products that have come to the agency's attention.

**DATES:** This regulation is effective December 23, 2004.

**FOR FURTHER INFORMATION CONTACT:** Cazemiro R. Martin or Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD-560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-2222.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

In the **Federal Register** of September 9, 1976 (41 FR 38312), FDA published,

under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products, together with the recommendations of the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (the Panel), which was the advisory review panel that evaluated these products. The agency's proposed regulation for OTC cough-cold combination drug products was published in the **Federal Register** of August 12, 1988 (53 FR 30522).

Final rules for these OTC drug products were published in segments: Anticholinergic (50 FR 46582, November 8, 1985), bronchodilator (51 FR 35326, October 2, 1986), antitussive (52 FR 30042, August 12, 1987), expectorant (54 FR 8494, February 28, 1989), antihistamine (57 FR 58356, December 9, 1992), and nasal decongestant (59 FR 43386, August 23, 1994). This document on combination drug products, general issues, and miscellaneous ingredients is the final segment. In response to the proposed rule for OTC cough-cold combination drug products, the agency received 21 comments, which are on public display in the Dockets Management Branch, Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. This final monograph addresses all comments and objections, except as discussed below.

In the **Federal Register** of July 27, 1995 (60 FR 38636), FDA published a final rule establishing that cough-cold combination drug products containing theophylline are not generally recognized as safe and effective and are misbranded for OTC use. In the **Federal Register** of September 27, 2001 (66 FR 49276), FDA published a partial final rule for cough-cold combination drug products containing a bronchodilator, stating that combinations containing any oral bronchodilator and any analgesic(s) or analgesic-antipyretic(s), anticholinergic, antihistamine, oral antitussive, or stimulant active ingredient are not generally recognized as safe and effective and are misbranded for OTC use. The combinations in these two final rules are listed in § 310.545(a)(6)(iv)(B) and (a)(6)(iv)(D),



respectively (21 CFR 310.545(a)(6)(iv)(B) and (a)(6)(iv)(D)).

This final rule does not address the combination of an oral bronchodilator and an expectorant or the combination of an oral bronchodilator and an oral nasal decongestant, which had not been previously classified. These two combination products will be addressed in a future issue of the **Federal Register**.

In the tentative final monograph for OTC cough-cold combination drug products, the agency proposed that combinations containing promethazine hydrochloride be switched from prescription to OTC status for short-term use (7 days) for relief of symptoms of the common cold (53 FR 30522 at 30559). In response, the agency received a citizen petition from a consumer's group and comments from several physicians objecting to OTC status for promethazine-containing drug products. The major concern raised was that use of promethazine in children under 2 years may be associated with the occurrence of sudden infant death syndrome, and that OTC availability could "dramatically increase" its "overuse" in children this age. The petition also raised concerns about possible adverse neurological reactions with promethazine. Following discussion at a Pulmonary-Allergy Drugs Advisory Committee meeting on July 31, 1989, the agency announced that cough-cold drug products containing promethazine hydrochloride could not be marketed OTC under the monograph (54 FR 36762, September 5, 1989). Subsequently, the agency received additional data to support OTC status for promethazine combinations for relief of symptoms of the common cold (Refs. 1, 2, and 3). The agency has not completed its review of these data nor made a final decision at this time on OTC use of promethazine combinations for relief of symptoms of the common cold and will issue a final decision in a future issue of the **Federal Register**.

In the **Federal Register** of April 9, 1996 (61 FR 15700), the agency published a final rule/enforcement policy establishing § 341.70 (21 CFR 341.70) for the use of diphenhydramine citrate and diphenhydramine hydrochloride as an antihistamine and an antitussive for treating concurrent symptoms in either a single-ingredient or combination drug product. That final rule permitted OTC marketing of such products pending completion of the current final rule.

Some of the combinations in this final rule include cough-cold ingredients in combination with either systemic analgesic-antipyretic or topical oral anesthetic/analgesic and demulcent

ingredients. The monographs for these OTC drug products have not been finalized to date. Topical oral analgesic-antipyretic active ingredients were proposed in part 343 (21 CFR part 343) in the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products (53 FR 46204, November 16, 1988). Anesthetic/analgesic and demulcent active ingredients were proposed in part 356 (21 CFR part 356) in the tentative final monograph for OTC oral health care drug products (53 FR 2436, January 27, 1988, and amended at 56 FR 48302, September 24, 1991). The citations to parts 343 and 356 in this final rule refer to the proposed sections that appear in the tentative final monographs. When the final monographs are issued for those two classes of OTC drugs, crossreferences to applicable sections will be included in part 341 (21 CFR part 341). If any changes occur in the monograph conditions in those tentative final monographs, they will be stated in the final monographs and any appropriate revisions that may need to be made in part 341 will also be stated in those final rules.

The agency advises that on or after December 23, 2004, no OTC drug product that is subject to this monograph and that contains a nonmonograph condition may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application or abbreviated application. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily as soon as possible.

## II. The Agency's Conclusions on the Comments

### A. General Comments on Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products

(Comment 1) One comment noted a possible conflict between the use of the terms "should" in proposed § 341.85(b)(1) and (b)(2) (which state: "The following indication for analgesic-antipyretic ingredients should be used") and "must" in proposed § 341.85(b)(3) (which states: "Both indications in § 341.85(b)(1) and (2) must be used."). The comment requested clarification of the agency's intention and the impact

on the "flexibility" policy in § 330.1(c)(2) (21 CFR 330.1(c)(2)).

The agency notes that the word "should" was used in proposed § 341.85(b)(1) and (b)(2) to reflect the flexibility policy set forth in § 330.1(c)(2) that is mentioned in the introductory paragraph under § 341.85(b). The word "must" in proposed § 341.85(b)(3) indicated that both of the indications specified in § 341.85(b)(1) and (b)(2) are required when a manufacturer elects to make both claims for its product. Although the words "should" and "must" are not used in this final rule, when both claims appear in labeling, the exact wording in § 341.85(b)(1) and (b)(2) need not be used because alternate wording in accord with § 330.1(c)(2) may be used.

### B. General Comments on Miscellaneous OTC Ingredients

(Comment 2) One comment submitted published literature (Ref. 4) to support the effectiveness of ascorbic acid (vitamin C), which was classified in category III in the tentative final monograph (53 FR 30522 at 30529), to reduce the duration and symptoms of the common cold. The comment contended that, although ascorbic acid may not prevent the common cold, there is considerable evidence indicating it is beneficial in reducing the duration and unpleasant symptoms of the common cold. The comment also submitted an unpublished study (Ref. 5) on the preventive effects of 500 milligrams (mg) ascorbic acid taken four times a day against naturally transmitted rhinovirus 16 in college students under strictly controlled conditions. The comment contended that preliminary results from this study show significant beneficial effects for several cold symptoms, such as cough.

The agency has determined that the submitted studies do not contain sufficient detail to assess their value in establishing the effectiveness of ascorbic acid in reducing the duration or symptoms of the common cold. In 1990, the agency asked the author of the comment to provide additional information (Ref. 6): (1) A detailed critical appraisal of these studies in accordance with the content and format described in § 314.50(d)(5) and (d)(6) (21 CFR 314.50(d)(5) and (d)(6)) (for clinical data and statistical analysis); and (2) a full report, including the protocol, complete patient data, and statistical analysis, of the rhinovirus study. This information was never provided. Thus, the agency is not including ascorbic acid in this final monograph.

(Comment 3) One comment noted the American Academy of Pediatrics' (AAP) recommendation for safety closures for products with over 5 percent ethanol (volume/volume (v/v)) (53 FR 30522 at 30529). The comment said the statutory authority to require child-resistant closures rests with the Consumer Product Safety Commission (CPSC) under the Poison Prevention Packaging Act of 1970, as mentioned in the tentative final monograph (53 FR 30522 at 30527). The agency notes that CPSC has published a final rule requiring child-resistant packaging for mouthwashes with 3 grams (g) or more of absolute ethanol per package (60 FR 4536, January 24, 1995).

(Comment 4) One comment argued against the AAP recommendations to limit the alcohol content of cough-cold drug products not intended for use in households with children or not labeled for use in the pediatric population. (See cough-cold combination tentative final monograph, comment no. 16 (53 FR 30522 at 30528 to 30529).)

The agency published a final rule for OTC drug products intended for oral ingestion that contain alcohol in the **Federal Register** of March 13, 1995 (60 FR 13590). In § 328.10 (21 CFR 328.10), the agency established the following alcohol limitations in OTC drug products: (1) A 10-percent alcohol limit for OTC drug products intended for adults and children 12 years of age and over, (2) a 5-percent alcohol limit for OTC drug products intended for children 6 to under 12 years of age, and (3) an 0.5-percent alcohol limit for OTC drug products intended for children under 6 years of age. That final rule was effective on March 13, 1996.

(Comment 5) One comment responded to the agency's request in comment no. 14 of the tentative final monograph (53 FR 30522 at 30528) for information on the minimum concentration of menthol needed to achieve a: (1) Flavoring effect and (2) therapeutic effect. The comment stated that menthol is generally recognized as safe for use as a flavoring substance in the food additive regulations (§§ 172.515 and 182.20 (21 CFR 172.515 and 182.20)); there are no numerical minimum or maximum concentrations; and the only regulatory condition is that flavoring substances be used in the minimum quantity needed to produce their intended effect, which the comment defined as the desired organoleptic impact that achieves consumer acceptance of the product. The comment argued the same principle should apply to OTC drug products containing menthol as a flavoring agent.

With respect to the minimum amount of menthol needed to achieve a therapeutic effect, the comment stated that the oral health care drug products tentative final monograph provides for topical oral anesthetic/analgesic use in a solid dosage form at a dose of 2 to 20 mg every 2 hours as needed (56 FR 48302 at 48344) and the antitussive drug products final monograph provides for a solid dosage form at a dose of 5 to 10 mg every hour as needed (52 FR 30042 at 30056). The comment concluded that the distinction between menthol as a flavoring and therapeutic agent should be based on the types of claims that are made for menthol in product labeling. The comment contended that this approach may include the dual use of menthol as an active ingredient and as a flavor in the same product with appropriate claims for each use on the product label.

The agency stated in the tentative final monograph for OTC cough-cold combination drug products (53 FR 30522 at 30528) that if menthol is present at a therapeutic level in a product, it is considered an active ingredient in that product. Menthol is an OTC topical antitussive (§ 341.14(b)(2)) with a dosage in a lozenge of 5 to 10 mg every hour as needed (§ 341.74(d)(2)(iii)). Combinations containing menthol used topically as an antitussive are included in § 341.40 of this final monograph provided that the product is available in a solid dosage form to be dissolved in the mouth (see section I.D, comment no. 12 of this document). Menthol is also proposed as a topical oral anesthetic/analgesic in a solid dosage form in § 356.12(f) with a dosage of 2 to 20 mg every 2 hours as needed (proposed § 356.52(d)(6)(ii), 56 FR 48302 at 48344). Proposed § 356.26(a) through (e) (56 FR 48343) for topical oral anesthetic/analgesics include the combinations containing menthol with a dosage of 2 to 20 mg every 2 hours. If menthol were used only as a flavor in any of these antitussive or anesthetic/analgesic products, then it must be used at an amount less than the minimum dosage for the product's indication(s); otherwise it would be deemed to be present in the product at a therapeutic level and would be considered active.

Section 172.515 of the food regulations states that flavoring substances and adjuvants may be safely used in foods when "they are used in the minimum quantity required to produce their intended effect." Similarly, when menthol is used in OTC drug products as an inactive ingredient for flavoring purposes, the minimum quantity needed to produce the

intended effect should be used. Use should also be in accord with § 330.1(e) (21 CFR 330.1(e)), i.e., the inactive ingredient is safe in the amount administered and does not interfere with the effectiveness of the drug product or with suitable tests or assays to determine if the product meets its professed standards of identity, strength, quality, and purity.

Because there is an effective dosage range, it is possible that menthol could be present in an antitussive or anesthetic/analgesic drug product both as an active ingredient and as a flavor. In such a situation, the agency would consider all of the menthol present to be an active ingredient, and menthol should be listed in the product's labeling as an active ingredient. However, the product could still state in its labeling that it is menthol flavored. In either case (antitussive or anesthetic/analgesic drug product), the total amount of menthol in the product cannot exceed the upper dosage limit stated in either monograph based on the product's labeled use(s).

(Comment 6) One comment requested clarification of the acceptable level of turpentine oil as an inactive ingredient in an ointment combination product applied topically to the chest as an antitussive. The comment stated that the agency did not consider turpentine oil to be an inactive ingredient because of its high concentration (4.7 percent weight/weight (w/w)) in the product (53 FR 30522 at 30550) and had previously indicated that 2 percent w/w was an acceptable level for turpentine oil as an inactive ingredient in the product (Ref. 7).

As the comment noted, the agency previously reviewed this matter (Refs. 7, 8, and 9) and determined that 2 percent or less w/w was an acceptable level of turpentine oil as an inactive ingredient in these ointment products. This use of turpentine oil as an inactive ingredient, e.g., as a fragrance or for tactile properties, in these OTC drug products should be in the minimum quantity needed to produce the intended effect.

### *C. General Comments on OTC Cough-Cold Combination Drug Products*

(Comment 7) One comment referred to comment no. 60 in the tentative final monograph for OTC cough-cold combination drug products (53 FR 30522 at 30550), concerning "irreconcilable" pediatric dosages for OTC cough-cold/ internal analgesic-antipyretic combinations. Referencing the agency's notice of intent on pediatric dosing information for OTC drug products (53 FR 23180, June 20, 1988), the comment asked the agency to

consider both weight-related and age-related pediatric dosage ranges for ingredients in OTC cough-cold combination drug products in that rulemaking.

The agency intends to address pediatric dosing issues for OTC cough-cold/internal analgesic-antipyretic combination drug products in a future issue of the **Federal Register**. For OTC cough-cold combination drug products containing oral analgesic-antipyretic active ingredients, this final rule applies only to the directions for adults and children 12 years of age and over; the directions for children under 12 years of age are deferred and do not need to conform to the directions in part 341 at this time.

(Comment 8) One comment mentioned an earlier request that the effective date for reformulation and relabeling of combination drug products containing ingredients from more than one monograph be the effective date of the last applicable final monograph. Noting that the agency had rejected this approach, the comment requested the agency to reconsider synchronization of effective dates for interrelated ingredients to minimize the resource burden and economic impact of possible multiple reformulations and ultimately to benefit consumers.

As the comment noted, the agency previously addressed this issue in the tentative final monograph for OTC cough-cold combination drug products (53 FR 30522 at 30554, comment no. 65). The agency stated there that its policy is that an OTC drug product, whether single ingredient or combination, must conform to an applicable monograph on the effective date of the final monograph. The agency has reconsidered this issue, as the comment requested, but concludes there is no need to change its policy on cough-cold combination product reformulations. All of the final monographs for the different pharmacologic classes of OTC cough-cold ingredients have been issued and are currently effective. Therefore, most currently marketed OTC combination drug products that contain only cough-cold ingredients should now contain monograph ingredients and labeling.

A few combination products containing only cough-cold ingredients and a few cough-cold combinations that contain internal analgesic or oral health care active ingredients may need reformulation of the cough-cold component(s) covered by part 341 and § 310.545(a)(6). However, the internal analgesic or oral health care ingredient(s) in the combination product is/are not affected by this final

rule. Manufacturers have 24 months to relabel combination products containing only cough-cold ingredients. The date for relabeling cough-cold combination products that contain internal analgesic or oral health care active ingredients will be specified in those final monographs.

#### *D. Comments on Specific OTC Cough-Cold Combination Drug Products*

(Comment 9) One comment stated that the table for combination drug products (53 FR 30522 at 30556 and 30557) lists analgesic-antipyretic(s) and an oral antitussive as a category I combination, while proposed § 341.40 *Permitted combinations of active ingredients* does not list this combination. The comment believed this was an oversight, and requested that an appropriate subsection be created in proposed § 341.40 to include this combination.

The agency is correcting this oversight by amending § 341.40 to include this combination.

(Comment 10) One comment was concerned that proposed § 341.40 did not specifically provide for cough-cold combinations with buffered aspirin and requested the agency amend the appropriate paragraphs of § 341.40 to include the phrase “or buffered aspirin or aspirin and antacid combinations.”

The tentative final monograph for cough-cold combination drug products was published before the internal analgesic tentative final monograph, and at that time the agency could not identify specific sections for the internal analgesic ingredients in these combinations. These sections can now be identified for all combinations that can contain buffered aspirin or aspirin and antacid combinations. Section 341.40(a), (c), (f), (g), (l), (m), (n), (o), (q), and (r) of this final monograph will be amended in the future to identify the specific section numbers for internal analgesic ingredients, including buffered aspirin and aspirin and antacid combinations, when the final monograph for OTC internal analgesic-antipyretic drug products is published in the future.

(Comment 11) One comment disagreed with the category III classification of combinations containing caffeine as a “sedative corrective” (an active ingredient specifically intended to counteract a side effect of other ingredients in the product). The comment noted that antihistamines are labeled with the warnings “May cause drowsiness” and “Use caution when operating a motor vehicle or operating machinery” (50 FR 2200 at 2208, January 15, 1985). The

comment argued that caffeine should not be excluded from combinations containing an antihistamine to treat the common cold because of the double-edged sedative effect of common cold lethargy and the ingestion of the antihistamine. Noting two products containing an antihistamine and caffeine marketed for 17 years with no complaints of drowsiness and no reports of ineffectiveness, the comment asked the agency to reclassify as category I combinations of an antihistamine and over 90 mg caffeine as a sedative corrective.

The agency disagrees with the comment. The Panel agreed with the rationale for caffeine serving as a “stimulant corrective” (the Panel’s term), but placed combinations containing caffeine in category III until such “corrective” pharmacological action could be proven (41 FR 38312 at 38325). The agency concurred in the tentative final monograph for OTC cough-cold combination drug products (53 FR 30522 at 30543) and noted that no further data had been submitted to support the effectiveness of caffeine as a “sedative corrective” (the agency’s term). No additional data were submitted after publication of the tentative final monograph for OTC cough-cold combination drug products. The marketing information provided by the comment regarding the two products containing both an antihistamine and caffeine that have been marketed for 17 years is supportive, but no clinical data were submitted. The agency considers the marketing information alone insufficient to justify inclusion of caffeine in a cough-cold combination to combat the drowsiness associated with antihistamine use or the “lethargy” that may accompany the common cold.

(Comment 12) One comment asked that proposed § 341.40(j), for oral antitussive active ingredients in § 341.14(a), be expanded to include topical antitussive active ingredients in § 341.14(b) in combination with any single or approved combination of topical oral anesthetic/analgesic active ingredients proposed in §§ 356.10 or 356.20 of the tentative final monograph for OTC oral health care drug products (53 FR 2436 at 2458). The comment noted that proposed § 356.20 permits combinations of anesthetic/analgesic ingredients such as benzocaine with menthol and benzocaine with phenol and, thus, a category I topical antitussive ingredient (e.g., menthol) should also be permitted to be combined with appropriate anesthetic/analgesic ingredients such as benzocaine. The comment noted that proposed § 341.40(j) included only

single oral anesthetic/analgesic ingredients and requested that oral antitussives be allowed to be combined with allowed oral anesthetic/analgesic combinations.

The Panel reviewed data relating to combination drug products containing cough-cold and oral health care active ingredients with claims for relief of sore throat (41 FR 38312 at 38325). The Panel established specific criteria for the treatment of symptoms with combination products and based its category I recommendations on whether the combination of ingredients is rational concurrent therapy for a significant and existing population. The majority of the data the Panel reviewed were for combinations containing anesthetic/analgesic and cough-cold ingredients. The Panel determined that products containing an antitussive or a nasal decongestant combined with a topical oral anesthetic/analgesic in a lozenge dosage form are rational, identified a target population that would benefit from such products, and recommended classifying such products in category I (41 FR 38312 at 38325). The agency concurred with the Panel in the tentative final monograph for OTC cough-cold combination drug products (53 FR 30522 at 30536 and 30537).

In the rulemaking for OTC oral health care drug products, the agency proposed in § 356.26(e) and (f) to allow combinations of benzocaine with menthol or phenol in oral anesthetic/analgesic combination drug products (56 FR 48302 at 48343). Thus, the agency agrees that menthol can be combined with benzocaine and that menthol in such a combination could be an antitussive, an oral anesthetic/analgesic, or both.

In the tentative final monograph for OTC cough-cold combination drug products, the agency determined that combinations containing anesthetic/analgesic and cough-cold ingredients could be rational only if the combination drug product is in a solid dosage form so that the anesthetic/analgesic ingredient may exert its topical effect and the oral antitussive can be ingested (53 FR 30522 at 30536 and 30537). However, menthol can be used in a solid dosage form that is dissolved in the mouth to provide topical antitussive action. The agency classified camphor as category I for topical (ointment) or steam inhalant antitussive use (52 FR 30042 at 30056), but camphor as a single ingredient in § 341.14(b)(1) is limited to ointment and steam inhalation use.

Although the comment suggested revisions of § 341.40(j) only, the types of changes requested also apply to

proposed § 341.40(q), (u), (w), (x), and (z) (redesignated as paragraphs (t), (w), (y), (z), and (bb), respectively), which include various combinations of an oral antitussive, and/or an anesthetic/analgesic, and/or an oral demulcent active ingredient. The agency is allowing the combinations specified in these paragraphs to be available in either a liquid (to be swallowed) or solid dosage form (to be dissolved in the mouth and swallowed) provided the antitussive is an oral (systemic) antitussive ingredient identified in § 341.13(a). (See section I.E, comment no. 18 of this document.) However, in this final monograph the agency is limiting any single topical antitussive active ingredient identified in § 341.14(b)(2) in combination drug products specified in § 341.40(k), (t), (w), (y), (z), and (bb) to a solid dosage form to be dissolved in the mouth and swallowed.

Menthol is used both as an antitussive and an oral health care anesthetic/analgesic. The agency has determined that an ingredient having multiple, concurrent uses can include that information in product labeling where appropriate (61 FR 15700, April 9, 1996). The statements of identity, indications, and warnings for concurrent use may be combined to eliminate duplicative words or phrases so that the resulting information is clear and understandable (60 FR 10286 at 10290, February 23, 1995). For concurrent use of menthol, the statement of identity would be "cough suppressant/oral anesthetic" or "antitussive (cough suppressant)/oral anesthetic." Indications, warnings, and directions would be combined from § 341.74(b), (c), and (d) and § 356.52(b), (c), and (d).

The antitussive directions are 5 to 10 mg every hour as needed, while the anesthetic/analgesic directions are 2 to 20 mg every 2 hours. The agency's policy is that when there is a difference in the directions established for the individual ingredients in a combination drug product, e.g., when the time intervals or age limitations for administration of the individual ingredients differ, the directions for a combination product may not exceed any maximum dosage limits established for the individual ingredients in the applicable OTC drug monograph (53 FR 30522 at 30554). This policy also applies when an ingredient is being labeled for dual use in a single product. Under this rationale, the every 2 hours directions for anesthetic/analgesic use would be controlling. The problem arises, however, that amounts of menthol from 2 mg up to 5 mg are not

monograph dosages for menthol for antitussive use. Therefore, the agency has determined that appropriate directions for menthol when labeled for both uses in a product is 5 to 10 mg every 2 hours. Interested parties may comment on this dosage and provide data and information to support an alternate dosage, using the citizen petition procedure in § 10.30.

Based on the discussion above and in section I.E, comment no. 18 of this document, the agency is including the topical antitussive menthol in combinations specified in § 341.40(k), (t), (w), (y), (z), and (bb) of this final monograph. Menthol as a topical antitussive can only be available in a solid dosage form when combined with any topical oral anesthetic/analgesic active ingredient. For oral antitussive-anesthetic/analgesic combinations, the directions for the individual ingredients are different and the directions for the combination may not exceed any maximum dosage limits, which includes dosing intervals, for any individual ingredient.

(Comment 13) Four comments requested that a four-ingredient combination containing an analgesic-antipyretic, antitussive, expectorant, and oral nasal decongestant be included in the monograph. The comments stated that this combination is supported by the rationale underlying various two, three, and four-ingredient combinations containing these components that were proposed as category I in the tentative final monograph (53 FR 30522 at 30561). One comment requested that the combination of an analgesic-antipyretic, expectorant, and oral nasal decongestant be classified as category I based on related proposed category I combinations (53 FR 30522 at 30561).

Another comment referred to comment no. 47 of the tentative final monograph (53 FR 30522 at 30540), where the agency proposed to classify in category I a combination containing an analgesic-antipyretic, antihistamine, oral antitussive, and oral nasal decongestant. The comment stated that, because the agency considers that an expectorant can be added to an analgesic-antipyretic in order to provide a product that will reduce fever and facilitate expulsion of bronchial secretions, and because the agency also considers that an expectorant can be added to an oral antitussive and oral nasal decongestant to control symptoms of excess bronchial and nasal secretions and cough, then it is rational to allow a combination containing an analgesic-antipyretic, oral antitussive, expectorant, and oral nasal decongestant that would not only control symptoms

of excess bronchial and nasal secretions and cough, but also fever that might accompany such symptoms.

One comment submitted five studies (two prospective epidemiological studies (Refs. 10 and 11), one retrospective epidemiological study (Ref. 12), and two consumer surveys (Refs. 13 and 14)) to demonstrate that a clinically significant target population exists that would require the use of the combination of an analgesic-antipyretic, antitussive, expectorant, and nasal decongestant to relieve concurrent symptoms of the common cold. One prospective epidemiological study (Ref. 10) included 373 colds studied in 293 subjects. The study results indicated that subjects in 56 percent of the cases had dry cough, nasal congestion, and aches (i.e., sore throat, headache, or achiness) for 1 or more days of a cold, and 29 percent had the symptoms for 3 or more days.

The second prospective epidemiological study (Ref. 11) was a multisite, upper respiratory survey by 14 pediatricians in 14 cities across the United States. The study included 3,166 male and female subjects, 2 to 12 years of age, who were treated by pediatricians during the winter of 1981 to 1982. On the day of first examination by the pediatrician, 12 percent of the subjects concurrently had dry cough, nasal congestion, and symptoms that would ordinarily require an analgesic-antipyretic. While severity of symptoms was not directly addressed, it was presumed the subjects had symptoms of sufficient severity or duration to visit a physician.

The retrospective epidemiological study (Ref. 12), previously submitted to the agency to support the combination of an analgesic-antipyretic, antihistamine, antitussive, and nasal decongestant, was discussed in the tentative final monograph for cough-cold combination drug products (53 FR 30522 at 30540 to 30541). The comment's data analysis showed symptoms of dry cough, pain, and nasal congestion (without the antihistamine symptoms) occurred concurrently in at least 31 percent of this study population. Although less than half of the subjects (42.8 percent) documented symptom severity, 27.8 percent of those subjects rated severity moderate to severe.

One consumer survey (Ref. 13) included data from telephone interviews with 322 people, 10 years of age or older, suffering from colds. At least 29.8 percent of the subjects concurrently had nasal/head congestion, pain/fever/sore throat, and cough/phlegm for 1 or more days, and 10.5

percent of the subjects had these symptoms for 3 or more days. The comment stated that the incidence of dry cough among subjects with the four concurrent symptoms remained high (25.8 percent on day 1 and 38.5 percent on day 7), while the incidence of dry cough among all subjects with colds declined (from 25.8 percent on day 1 to 12.4 percent on day 7).

The second consumer survey (Ref. 14) included 2,297 adults and 1,423 children 6 to 17 years of age. Female heads of household identified the most severe symptoms of the cold or flu sufferer. The survey showed 25 percent of adults and 15 percent of children with colds and 37 percent of adults and 36 percent of children with flu reported four concurrent symptoms of coughing, chest congestion, nasal congestion, and sore throat.

The agency has reviewed these data and other information and agrees they are adequate to include the following two combinations in this final monograph: (1) Analgesic-antipyretic, expectorant, and nasal decongestant and (2) analgesic-antipyretic, antitussive, expectorant, and nasal decongestant. The data showed there is a population with multiple cough-cold symptoms who benefit from these specific three or four ingredient combinations (Ref. 15).

(Comment 14) One comment requested category I status for the nasal decongestant combination of l-desoxyephedrine and an aromatic mixture containing camphor, menthol, bornyl acetate, and lavender oil, which did not include the ingredient methyl salicylate as proposed in § 341.40(s) (53 FR 30522 at 30546 and 30547). The comment noted consumers' concerns about salicylates and contended: (1) The deletion of methyl salicylate from the aromatic mixture does not affect to a measurable extent the effectiveness, manufacture, product stability, or safety of this product, and (2) the revised combination product is still consistent with the agency's "General Guidelines for OTC Drug Combination Products" (Ref. 16). The comment subsequently informed the agency that bornyl acetate is an inactive ingredient in the product.

The data (Ref. 17) that led to category I status for l-desoxyephedrine as a single ingredient and when combined with the aromatic mixture did not include any studies of the combination using the aromatic mixture without methyl salicylate or bornyl acetate. The combination contains 11 mg methyl salicylate and 0.2 mg bornyl acetate. The agency accepts the comment's statement that bornyl acetate is an inactive ingredient in this product because of the insignificant amount that

is present. However, the agency is concerned about deletion of the 11 mg of methyl salicylate. While such a revised combination might be consistent with the agency's general guidelines (Ref. 16), without data showing that methyl salicylate does not make a contribution to the overall nasal decongestant effectiveness of the combination, the agency has no evidence that the aromatic mixture without methyl salicylate has the same effect when combined with l-desoxyephedrine. Therefore, the agency is including the combination proposed in § 341.40(s) in this final monograph with deletion of the bornyl acetate but not with deletion of the methyl salicylate. The agency notes that the name for l-desoxyephedrine is now levmetamfetamine, and there is a compendial monograph for lavender oil (Ref. 18).

(Comment 15) One comment submitted data (Ref. 19) to support the reclassification of the combination of camphor, eucalyptus oil, and menthol from category III to category I for OTC topical/inhalant nasal decongestant use as an ointment and steam inhalant. The data included a resubmission of three clinical studies (CRD 82-10, CRD 82-09, and CRD 83-10), including a reanalysis of the data for study CRD 83-10 submitted previously, to demonstrate the individual active ingredients as nasal decongestant topical/inhalant in a steam vaporizer. The submission also included two clinical effectiveness studies (CRD 87-25 and CRD 89-01) on the combination of camphor, eucalyptus oil, and menthol for nasal decongestant use in an ointment. The comment requested that this combination be classified as a category I topical/inhalant nasal decongestant in the same manner as previously done in the final monograph for OTC antitussive drug products (52 FR 30042 at 30056).

The agency has reviewed the data and other information (Ref. 20) and determined they are not sufficient to establish the effectiveness of the combination of camphor, eucalyptus oil, and menthol for nasal decongestant use in an ointment or for steam inhalation. The statistical reanalysis of study CRD 83-10 submitted to support the effectiveness of the individual active ingredients for nasal decongestant use was discussed in comment no. 5 in the final monograph for OTC nasal decongestant drug products (53 FR 43386 at 43389 to 43390). The agency has determined that the conclusions reached on the single ingredients also apply to their use in combination. The latest submission contained no new information on this study. Further,

study CRD 83–10 was the only study involving use of the ingredients in a hot steam vaporizer. The agency had informed the author of the comment previously of the need to consider a repeated measurement analysis should another study be done (Ref. 21). That type of data has not been provided to date. Based on a lack of adequate clinical effectiveness data, the agency is not including this combination in this final monograph.

*E. Comments on Specific Dosage Forms for OTC Cough-Cold Combination Drug Products*

(Comment 16) One comment requested that a combination of camphor, eucalyptus oil, and menthol be category I for antitussive use in a liquid dosage form by evaporation/inhalation at ambient temperatures. Noting the proposed category I status of the combination of camphor, eucalyptus oil, and menthol in an ointment dosage form for antitussive use (53 FR 30522 at 30547), the comment argued that inhalation of vapors by evaporation from a liquid at ambient temperature or from a topically applied ointment are comparable. The comment provided a protocol for an in vitro effectiveness study to determine whether the release of vapors from camphor, eucalyptus oil, and menthol in a liquid dosage form by evaporation through a wick system is bioequivalent to the release of vapors from the same ingredients in an ointment dosage form rubbed on the chest (Ref. 22).

The agency does not consider the release of vapors from a liquid dosage form by evaporation through a wick system to be comparable to the release of vapors from an ointment dosage form rubbed on the chest of the user. A liquid dosage form that remains in a stationary position and works by evaporation limits the mobility of the user to a specific distance from the container and, thus, is not comparable to the ointment dosage form. Because there are significant differences between the release of vapors from a wick system and the release of vapors from an ointment, the agency concludes that comparative in vitro studies will provide little useful information and that clinical studies are necessary to demonstrate effectiveness (Ref. 23).

(Comment 17) One comment submitted data (Ref. 24) to support monograph status for the combination of 0.2 percent pheniramine maleate and 0.5 percent phenylephrine hydrochloride in a nasal spray dosage form when labeled for relief of nasal decongestion associated with colds, sinusitis, or allergic rhinitis. Two new

clinical studies (WM 440 and WM 464) were conducted to demonstrate added nasal decongestant benefit when 0.2 percent pheniramine maleate is added to a nasal spray containing 0.5 percent phenylephrine hydrochloride.

Study WM 440 was a randomized, double-blind, multiple-dose, placebo-controlled, trial involving 90 subjects with seasonal allergic rhinitis. Subjects were given either 0.5 percent phenylephrine hydrochloride and 0.2 percent pheniramine maleate in combination, 0.5 percent phenylephrine hydrochloride alone, or placebo two times daily, 4 hours apart for 2 days. (Pheniramine maleate was not studied alone.) Total nasal air flow rates were measured prior to dosage and at timed intervals up to 8 hours. A subjective evaluation of symptoms associated with allergic rhinitis was also done at baseline and at hourly intervals. The investigator found significant carryover effects for time zero in the 2-day study and concluded that only results of day 1 were significant and that the combination was more effective than 0.5 percent phenylephrine hydrochloride alone.

Study WM 464 was a double-blind, single-dose, randomized, parallel-group, placebo-controlled, trial involving 240 subjects with upper respiratory tract infections (URTI). Subjective measurements of effectiveness were done at time intervals up to 4 hours using a “100 mm visual analog nasal congestion scale” and a “6 category nasal congestion relief rating scale.” The investigator concluded the study showed that the combination drug product was more effective than either drug alone in subjects with URTI.

The agency finds the data inadequate to support monograph status (Ref. 25). Study WM 440 is deficient because it did not include a group in which 0.2 percent pheniramine maleate was given as the active ingredient. In addition, there were significant carryover effects and, because only the results of the first day were useful, the duration of the study was insufficient. An adequate, randomized, parallel study in a sufficiently large number of subjects who receive the test drug(s) for at least 3 days (preferably for the duration of the syndrome) is required to demonstrate effectiveness of this combination.

The agency does not consider study WM 464 adequate to demonstrate effectiveness because it was only a single-dose study and pheniramine maleate was not shown to be effective. For all the time/effectiveness measurement intervals up to 4 hours, pheniramine maleate alone showed an effect only at 15 minutes. The agency

has determined that the dosages used in the study should have been administered according to the proposed label directions and the study should have had a duration of at least 3 days if the product is to be indicated for URTI and at least 7 days (preferably 2 weeks or more) if the product is to be indicated for allergies.

The author of the comment submitted data to support a combination drug product consisting of both a nasal decongestant and an antihistamine, analyzed the study results for nasal decongestion and for symptoms associated with allergic rhinitis, but requested monograph status for this product only when labeled for relief of nasal congestion associated with colds, sinusitis, or allergic rhinitis. Nasal decongestant drug products can make this type of claim (§ 341.80(b)). The comment did not indicate clearly what claim(s) were proposed for the pheniramine maleate component of this product. The agency concludes that data supporting claims for an oral antihistamine, such as relief of symptoms of runny nose and watery, itchy eyes, are necessary.

(Comment 18) One comment requested that several proposed cough-cold combination formulations containing an oral nasal decongestant, oral antitussive, oral anesthetic/analgesic, and oral demulcent (53 FR 30522 at 30537) not be limited to solid dosage forms. The comment stated that, from a pharmaceutical standpoint, it is possible to formulate safe and effective drug products that combine demulcents (e.g., gelatin, glycerin, and pectin) in liquid dosage forms with other cough-cold monograph ingredients. The comment noted that the demulcent ingredients gelatin, glycerin, and pectin are permitted in lozenge or liquid dosage forms in the tentative final monograph for OTC oral health care drug products (53 FR 2436 at 2460 and 2461). The comment argued that the systemic action of cough-cold ingredients would not be adversely affected by the addition of a demulcent and that the demulcent would be applied directly to the throat tissues when swallowed, thus, producing the intended protective effect. The comment contended that it is both rational and practical for the final monograph to include combinations of systemically acting cough-cold ingredients and a demulcent in liquid dosage forms.

The agency agrees with the comment. Nine combinations proposed in the tentative final monograph for OTC cough-cold combination drug products specify that the product be in a solid dosage form. See § 341.40(j), (p), (q), (u),

(v), (w), (x), (y), and (z). Menthol as a single ingredient in § 341.14(b)(2) is limited to a solid dosage form. However, menthol as an oral anesthetic/analgesic is not limited to solid dosage form products. If menthol were present in the above combinations as an oral anesthetic/analgesic ingredient, a liquid product would allow oral systemically acting cough-cold ingredients to be swallowed and would allow the oral anesthetic/analgesic (or demulcent, if present) to exert a topical therapeutic effect in the throat or mouth. The proposed directions for an anesthetic/analgesic or a demulcent in a liquid dosage form state that the product should be gargled, swished around in the mouth, or allowed to remain in place for at least 1 minute and then spit out (56 FR 48302 at 48343 to 48347). However, the anesthetic/analgesic or demulcent in a combination product should not be spit out so that the systemically acting cough-cold ingredients can be effective. The agency does not see any safety problems when small quantities of an anesthetic/analgesic (menthol) or a demulcent (gelatin, glycerin, and pectin), as allowed in products regulated by OTC drug monographs, are swallowed. Therefore, the agency is allowing the nine combination drug products to be in either a liquid (to be swallowed) or a solid dosage form (to be dissolved in the mouth and swallowed), with specific directions for products with an anesthetic/analgesic and/or a demulcent in a liquid dosage form in § 341.85(d)(1) of this final monograph.

(Comment 19) One comment requested monograph status for the combination of camphor and menthol for steam inhalation antitussive use. The comment noted that in the tentative final monograph for OTC cough-cold combination drug products (53 FR 30522 at 30549) camphor and menthol individually are monograph drugs for steam inhalation use for antitussive claims (52 FR 30042, August 12, 1987); that further effectiveness data are not needed for these ingredients; and that data are needed to establish that the combination of these ingredients has some advantage over the single ingredients. The comment stated that whether camphor and menthol are delivered in a steam inhalation dosage form or an ointment dosage form, it is the inhalation of the aromatic ingredients that provides the antitussive benefits. The comment contended that steam inhalation provides a convenient dosage delivery form that is essentially identical to the ointment dosage form, which is rubbed on the chest, for

consumers who want the benefits of medicated steam inhalation. The comment felt that the agency's "General Guidelines for OTC Drug Combination Products" (Ref. 16) also support the combination by stating that patient acceptance or quality of formulation can be considered criteria to demonstrate the advantage of a combination over its single ingredients.

The agency has determined that the comment did not provide sufficient information to demonstrate that the combination has some advantage over the single ingredients. As the agency stated in the tentative final monograph for OTC cough-cold combination drug products (53 FR 30522 at 30549), data are required to establish that the combination of camphor and menthol for steam inhalation antitussive use has some advantage over the single ingredients. A long marketing history and a belief that the combination of these ingredients may contribute to consumer acceptance of this drug product do not provide adequate data to demonstrate that the combination provides some advantage over the single ingredients. This combination for steam inhalation antitussive use is not included in the final monograph.

### III. The Agency's Final Conclusions on OTC Cough-Cold Combination Drug Products

Based on the available evidence, the agency is issuing a final monograph establishing conditions under which OTC cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products are generally recognized as safe and effective and not misbranded. The agency has included 36 combinations in §§ 341.40(a) through (bb) and 341.70(a) and (b) of the monograph. This includes the combination of an antihistamine, oral antitussive, and analgesic-antipyretic, which was inadvertently not included in the proposal. All other cough-cold combination products are nonmonograph. These include, but are not limited to, the following combinations that were considered and rejected in this rulemaking: (1) Oral antitussive and debriding agent/oral wound cleanser; (2) antihistamine and debriding agent/oral wound cleanser; (3) oral antitussive and astringent; (4) antihistamine and astringent; (5) anticholinergic and expectorant; (6) antihistamine and expectorant; (7) antihistamine (if antihistamine is also a monograph antitussive, except diphenhydramine citrate and diphenhydramine hydrochloride) and oral antitussive; (8) oral antitussive (if antitussive is also a monograph

antihistamine, except diphenhydramine citrate and diphenhydramine hydrochloride) and antihistamine; (9) antihistamine and anticholinergic; (10) antihistamine and oral anesthetic/analgesic; (11) antihistamine and oral demulcent; (12) antihistamine and nasal decongestant (administered topically as spray or drops); (13) oral antitussive and expectorant (for productive cough); (14) oral antitussive, expectorant, and oral nasal decongestant (for productive cough); (15) expectorant and oral anesthetic/analgesic; (16) expectorant and oral demulcent; (17) anticholinergic, antihistamine, and oral nasal decongestant; (18) atropine and oral nasal decongestant; (19) monograph ingredients from different pharmacologic groups if any ingredient is at less than the minimum effective dosage (unless the ingredient(s) are being used to treat the same symptom); (20) two or more ingredients at less than the minimum effective dosage and used to treat the same symptom (labeling claim) (even if the product contains monograph ingredients from different pharmacologic groups); (21) more than two active ingredients from the same pharmacologic group; (22) an antihistamine for the relief of symptoms of allergic rhinitis and an additional antihistamine which is added exclusively for sedation, and the product contains labeling which represents the additional antihistamine as a sleep-aid; (23) an antihistamine with a sleep-aid claim; (24) nonmonograph ingredients or labeling; (25) two monograph ingredients from the same pharmacologic group; (26) two monograph ingredients from the same pharmacologic group if either or both ingredients are at less than the minimum effective dosage; (27) a corrective (an active ingredient specifically intended to counteract a side effect of other ingredients in the product), e.g., caffeine, and any monograph ingredient(s); (28) phenobarbital (as a stimulant corrective); (29) several claimed active ingredients that are mixtures of volatile substances with overlapping pharmacologic activities for which a minimum effective dosage cannot be established for one or more of the ingredients when tested alone; (30) a stimulant, e.g., caffeine (at a fully effective level), and any monograph ingredient(s); (31) caffeine (15 to 30 mg) to combat lethargy (not as a sedative corrective) and cold preparations not containing antihistamines; (32) vitamin C and monograph ingredient(s) for prevention or treatment of the common cold; (33) any vitamins with labeling

claims for prevention or treatment of the common cold; (34) caffeine and ephedrine, phenylpropanolamine, or pseudoephedrine; (35) menthol, camphor, eucalyptus oil, thymol, cedar leaf oil, and nutmeg oil (myristica oil) in a suitable vehicle for steam inhalation or topical use as a nasal decongestant; (36) menthol and eucalyptus oil in a lozenge as a topical antitussive; and (37) menthol, camphor, eucalyptus oil, tincture of benzoin, and polyoxyethylene dodecanol for steam vaporizer use as an antitussive. A number of bronchodilator combination drug products were previously found nonmonograph (66 FR 49276).

The agency has made a minor revision in the indication proposed in § 341.85(b)(1) for combinations with an analgesic-antipyretic active ingredient labeled for relief of general cough-cold symptoms and/or the common cold, deleting the words “muscular aches,” “associated with,” and “(select one of the following: ‘the common cold’ or ‘a cold’).” This deletion is consistent with recommendations made by the Nonprescription Drugs Advisory Committee and the OTC Analgesic Subcommittee of the Arthritis Advisory Committee on September 8 and 9, 1994. The agency has concluded that labeling claims for analgesic-antipyretic ingredients (i.e., the myriad of claims in the labeling of presently marketed products and in proposed § 343.50(b)(1), (b)(2), and (b)(3)) should be simply and clearly stated in a general manner. The agency will be discussing this subject in more detail in the rulemaking for OTC internal analgesic-antipyretic drug products in a future issue of the **Federal Register**. If any changes subsequently occur in that rulemaking, the agency will amend the current final rule accordingly. The agency has also made minor revisions in the indications in § 341.85(b)(1) and (b)(2) to put them into the new OTC drug product labeling format.

When the tentative final monograph for cough-cold combination drug products was published in 1988, proposed § 341.85(b)(4) referred to proposed § 356.55(b)(1), which was proposed on January 27, 1988 (53 FR 2436 at 2458). That section was renumbered as § 356.52(b)(1) on September 24, 1991 (56 FR 48302 at 48343). Section 341.85(b)(4) in this final rule will be amended in the future to refer to § 356.52(b), as appropriate.

The agency has revised the warnings proposed in § 341.85(c) to the new OTC drug labeling format, which has caused some changes in the way that the warning information is presented. In addition, in several instances, the

agency changed a “do not take for more than 10 days” statement (internal analgesic component) to 7 days because of the antitussive or nasal decongestant component of the product, which has a 7-day limit on use. This approach for warnings is similar to that used for directions when the time intervals for individual ingredients differ.

Any drug product labeled, represented, or promoted for use as an OTC cough-cold combination drug that contains any of the ingredients listed in § 310.545(a)(6) or that is not in conformance with the monograph (part 341) may be considered a new drug within the meaning of section 201(p) of the act (21 U.S.C. 321(p)) and misbranded under section 502 of the act (21 U.S.C. 352). Such a drug product cannot be marketed for OTC cough-cold use unless it is the subject of an approved application under section 505 of the act (21 U.S.C. 355) and part 314 of the regulations (21 CFR part 314). An appropriate citizen petition to amend the monograph may also be submitted in accord with 21 CFR 10.30 and 330.10(a)(12)(i). Any OTC cough-cold combination drug product initially introduced or initially delivered for introduction into interstate commerce after the effective date of this final rule that is not in compliance with the regulations is subject to regulatory action.

#### IV. Analysis of Impacts

The agency did not receive any comments in response to its request in the tentative final monograph (53 FR 30522 at 30560) for specific comment on the economic impact of this rulemaking. FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written

statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million (adjusted annually for inflation). The proposed rule published before the Unfunded Mandates Reform Act of 1995 was enacted.

The agency concludes that this final rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. FDA has determined, as discussed in this section of the document, that the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Unfunded Mandates Reform Act of 1995 does not require FDA to prepare a statement of costs and benefits for the final rule, because the final rule is not expected to result in any 1-year expenditure that would exceed \$100 million adjusted for inflation. The current inflation adjusted statutory threshold is about \$110 million.

The purpose of this final rule is to add 36 allowable combinations and their labeling to the monograph and to declare a number of other combinations as not generally recognized as safe and effective. Most of the individual cough-cold ingredients in these combination products are already included in the monograph, and the majority of marketed OTC cough-cold combination drug products already contain the ingredient combinations included in the final monograph. Most reformulations will involve the substitution of one cough-cold ingredient for another or the reformulation of a product containing a cough-cold ingredient and an oral health care ingredient, where such a combination has not been established as safe and effective.

The agency’s Drug Listing System identifies over 200 manufacturers and 300 marketers (distributors and repackers) of almost 8,300 OTC cough-cold combination drug products. Although some of these products may no longer be marketed, it is likely that there are additional marketers and products not currently included in the agency’s system. Thus, FDA estimates that approximately 10,000 products could be subject to this final rule. Manufacturers will incur the vast majority of the incremental costs attributed to this rule.

The agency is unable to determine the number of products that will require reformulation but, with few exceptions, manufacturers have known which ingredients were going to be included in



this final monograph for a substantial period of time. Many manufacturers have already reformulated their products. Others may decide to drop the nonmonograph products from their product lines, either because they already produce a substitute product that complies with the monograph, or because product sales are marginal and do not justify the expense of reformulation.

The cost to reformulate a product will vary greatly depending on the nature of the change in formulation, the product, the process, and the size of the firm. Because of the large number of cough-cold ingredients available for substitution, no manufacturer should need to conduct clinical studies or change a dosage form; however, manufacturers will have to redo the validation (product, process, new supplier), conduct stability tests, and change master production records in order to ensure compliance with current good manufacturing practice. (See section 501(a)(1)(B) of the act (21 U.S.C. 351(a)(1)(B)) and 21 CFR parts 210 and 211.) The agency estimates that the cost of reformulation ranges from \$100,000 to \$500,000 per product, and may average about \$250,000. FDA is uncertain about the number of cough-cold combination products that will be reformulated, but if 50 to 100 products were reformulated, the total cost would range from \$12.5 to \$25 million. These costs may be smaller if most manufacturers elect to discontinue marketing marginal products rather than incur the expense of reformulating.

The agency points out that the need to reformulate existing products has two components in this final rule. Ten of the monograph combinations contain analgesic-antipyretic active ingredients and nine other combinations contain oral health care (oral anesthetic/analgesic or demulcent) active ingredients. The monographs for the analgesic-antipyretic and oral health care ingredients have not been finalized to date; therefore, the final rule does not require the reformulation of that component of such combinations. However, those specific combinations of cough-cold ingredient(s) with an analgesic-antipyretic or oral health care ingredient(s) that have been found unacceptable in this final rule must be reformulated (or removed from the market) by the date specified in the final rule. Consumers will benefit from reformulation because products that have not been found safe and effective will be replaced by products containing combinations of ingredients deemed safe and effective.

Some relabeling is required by this final rule. However, most of the relabeling results from the earlier final rule on the standardized content and format requirements for all OTC drug products. (See the **Federal Register** of March 17, 1999, 63 FR 13254.) This final rule contains only a few labeling changes for combination products containing only cough-cold ingredients. Manufacturers will have 24 months to relabel those products in the new OTC drug product labeling format in § 201.66 (21 CFR 201.66).

The incremental labeling costs for cough-cold combinations with an analgesic-antipyretic (proposed part 343) or oral health care active ingredient (proposed part 356) are minimal, because neither of those monographs has been completed to date. Although final monographs have not been published for OTC internal analgesic-antipyretic or oral health care drug products, the current final rule includes some specific labeling for cough-cold combination products that contain internal analgesic-antipyretic or oral health care active ingredients. The date for relabeling cough-cold combination drug products with those ingredients will be specified in those final monographs.

The agency obtained estimates of relabeling costs for the type of changes required by this rule ranging from \$2,700 to \$10,000 per standard stock keeping unit (SKU) (individual products, packages, and sizes) for nationally branded products and from \$500 to \$1,500 per SKU for private label brands. Because nationally branded products make up only a small portion of all cough-cold combination products, FDA estimates, based on its experience, that 20 percent of the SKU's affected by this rule are branded products and 80 percent are private label products. Using the midpoints of the redesign cost ranges, the weighted average cost to relabel is \$2,070 per SKU. Based on FDA estimates that 5 to 10 percent of the affected 10,000 SKU's will be relabeled, the total one-time incremental costs of relabeling would range from \$1 to \$2.1 million.

The final rule will not require any new reporting or recordkeeping activities. Therefore, no additional professional skills are needed. There are no other Federal rules that duplicate, overlap, or conflict with the final rule. The agency concludes that there are no significant alternatives to the final rule that would adequately provide for the safe and effective use of OTC cough-cold combination drug products.

The majority of the manufacturers, distributors, and repackers of cough-

cold combination drug products subject to this final rule are considered small entities using the U.S. Small Business Administration (SBA) designations for this industry (750 employees). Because census size categories do not correspond to the SBA designation of 750 employees, the agency figures are based on 500 employees. This final rule may have a significant impact on some small entities, especially those that need to reformulate or relabel a number of affected products. To provide assistance, FDA has taken steps to minimize the impact of relabeling costs on small entities. These steps include providing enough implementation time (24 months) to enable firms to use up existing labeling stock and to undertake the labeling changes required by this final monograph concurrently with the labeling changes required by the new OTC drug labeling format (§ 201.66). These actions will provide substantial flexibility and reduced regulatory burdens for small entities.

The agency considered but rejected several labeling alternatives: (1) A shorter or longer implementation period, and (2) an exemption from coverage for small entities. While the agency believes that consumers would benefit from having this new labeling in place as soon as possible, the agency also acknowledges that coordinating the labeling changes in this final rule with implementation of the new OTC "Drug Facts" labeling significantly reduces the costs of this final rule. Also, the 24-month compliance period will enable most manufacturers to implement the new labeling and to make the necessary manufacturing adjustments based on the seasonal nature of these cough-cold combination drug products. The agency rejected an exemption for small entities because the new labeling and revised formulations, where applicable, are also needed by consumers who purchase products marketed by those entities.

The agency has undertaken important steps to reduce the burden to small entities. Nevertheless, some entities, especially those firms that manufacture several affected products, may incur significant impacts. This economic analysis, together with other relevant sections of this document, serves as the agency's final regulatory flexibility analysis, as required under the Regulatory Flexibility Act.

#### V. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the labeling is a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

## VI. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

## VIII. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**) under Docket No. 76N-052G and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

- (1) Comment No. C00223.
- (2) Comment No. C00224.
- (3) Comment No. C00225.
- (4) Comment No. C00198.
- (5) Dick, E. C., S. L. Inhorn, and L. C. Jennings, "Field Trial Among Human Volunteers Mimicking a 7-Day Boarding School Environment," Comment No. C00198.
- (6) Letter from W. E. Gilbertson, FDA, to A. J. Iannarone, Hoffman-La Roche, Inc., coded LET105.
- (7) Letter from W. E. Gilbertson, FDA, to G. F. Hoffnagle, Richardson-Vicks, Inc., coded ANS1.
- (8) Letter from S. Salerno, The Procter & Gamble Co., to W. E. Gilbertson, FDA, dated July 6, 1995, in OTC Vol. 04GFM.
- (9) Letter from W. E. Gilbertson, FDA, to S. Salerno, The Procter & Gamble Co., dated July 27, 1995, in OTC Vol. 04GFM.
- (10) Attachment 4 in Comment No. C00218.
- (11) Attachment 6 in Comment No. C00218.
- (12) Attachment 8 in Comment No. C00218.

(13) Attachment 10 in Comment No. C00218.

(14) Attachment 11 in Comment No. C00218.

(15) Letter from W. E. Gilbertson, FDA, to R. A. Stolt, The Procter & Gamble Co., coded LET118.

(16) Food and Drug Administration "General Guidelines for OTC Drug Combination Products, September 1978," Docket No. 78D-0322, Dockets Management Branch.

(17) Comment No. C00111.

(18) *The United States Pharmacopeia XXI-The National Formulary XVI*, The United States Pharmacopeial Convention, Inc., Rockville, MD, p. 1572, 1985.

(19) Comment No. C00217.

(20) Letter from W. E. Gilbertson, FDA, to R. A. Stolt, The Procter & Gamble Co., coded LET 117.

(21) Letter from W. E. Gilbertson, FDA, to E. J. Hanus, Richardson-Vicks, coded LET095.

(22) Comment No. C00191.

(23) Letter from W. E. Gilbertson, FDA, to R. B. Seymour, O'Connor Pharmaceuticals, coded LET108.

(24) Comment No. C00216.

(25) Letter from W. E. Gilbertson, FDA, to J. R. Jacobs, Whitehall Laboratories, coded ANS2.

### List of Subjects in 21 CFR Part 341

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 341 is amended as follows:

### PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTI-ASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 341 continues to read as follows:

**Authority:** 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

2. Section 341.40 is added to subpart C to read as follows:

#### § 341.40 Permitted combinations of active ingredients.

The following combinations are permitted provided each active ingredient is present within the dosage limits established in parts 341, 343, and 356 of this chapter and the product is labeled in accordance with §§ 341.70 or 341.85:

(a) Any single antihistamine active ingredient identified in § 341.12 may be combined with any generally recognized as safe and effective single analgesic-antipyretic active ingredient, or any combination of acetaminophen with other analgesic-antipyretic active ingredients, or any aspirin and antacid combination provided that the product is labeled according to § 341.85.

(b) Any single antihistamine active ingredient identified in § 341.12 may be combined with any single oral nasal decongestant active ingredient identified in § 341.20(a) provided that the product is labeled according to § 341.85.

(c) Any single antihistamine active ingredient identified in § 341.12 may be combined with any single oral nasal decongestant active ingredient identified in § 341.20(a) and any generally recognized as safe and effective single analgesic-antipyretic active ingredient, or any combination of acetaminophen with other analgesic-antipyretic active ingredients, or any aspirin and antacid combination provided that the product is labeled according to § 341.85.

(d) Any single antihistamine active ingredient identified in § 341.12(a) through (e) and (h) through (m) may be combined with any single oral antitussive active ingredient identified in § 341.14(a)(1) through (a)(4) provided that the product is labeled according to § 341.85(c)(4). Diphenhydramine citrate in §§ 341.12(f) and 341.14(a)(5) or diphenhydramine hydrochloride in §§ 341.12(g) and 341.14(a)(6) may be both the antihistamine and the antitussive active ingredient provided that the product is labeled according to § 341.70(a).

(e) Any single antihistamine active ingredient identified in § 341.12(a) through (e) and (h) through (m) may be combined with any single oral antitussive active ingredient identified in § 341.14(a)(1) through (a)(4) and any single oral nasal decongestant active ingredient identified in § 341.20(a) provided that the product is labeled according to § 341.85(c)(4). Diphenhydramine citrate in §§ 341.12(f) and 341.14(a)(5) or diphenhydramine hydrochloride in §§ 341.12(g) and 341.14(a)(6) may be both the antihistamine and the antitussive active ingredient provided that the product is labeled according to § 341.70(a).

(f) Any single antihistamine active ingredient identified in § 341.12(a) through (e) and (h) through (m) may be combined with any single oral antitussive active ingredient identified in § 341.14(a)(1) through (a)(4) and any generally recognized as safe and effective single analgesic-antipyretic active ingredient, or any combination of acetaminophen with other analgesic-antipyretic active ingredients, or any aspirin and antacid combination provided that the product is labeled according to § 341.85(c)(4). Diphenhydramine citrate in §§ 341.12(f) and 341.14(a)(5) or diphenhydramine hydrochloride in §§ 341.12(g) and

341.14(a)(6) may be both the antihistamine and the antitussive active ingredient provided that the product is labeled according to § 341.70(a).

(g) Any single antihistamine active ingredient identified in § 341.12(a) through (e) and (h) through (m) may be combined with any single oral antitussive active ingredient identified in § 341.14(a)(1) through (a)(4) and any single oral nasal decongestant active ingredient identified in § 341.20(a) and any generally recognized as safe and effective single analgesic-antipyretic active ingredient, or any combination of acetaminophen with other analgesic-antipyretic active ingredients, or any aspirin and antacid combination provided that the product is labeled according to § 341.85(c)(4).

Diphenhydramine citrate in §§ 341.12(f) and 341.14(a)(5) or diphenhydramine hydrochloride in §§ 341.12(g) and 341.14(a)(6) may be both the antihistamine and the antitussive active ingredient provided that the product is labeled according to § 341.70(a).

(h) Any single oral antitussive active ingredient identified in § 341.14(a)(1) through (a)(4) may be combined with any single expectorant active ingredient identified in § 341.18 provided that the product is labeled according to § 341.85.

(i) Any single oral antitussive active ingredient identified in § 341.14(a) may be combined with any single oral nasal decongestant active ingredient identified in § 341.20(a) provided that the product is labeled according to § 341.85.

(j) Any single oral antitussive active ingredient identified in § 341.14(a)(1) through (a)(4) may be combined with any single oral nasal decongestant active ingredient identified in § 341.20(a) and any single expectorant active ingredient identified in § 341.18 provided that the product is labeled according to § 341.85.

(k) Any single antitussive active ingredient identified in § 341.14(a) or (b)(2) may be combined with any generally recognized as safe and effective single oral anesthetic/analgesic active ingredient, or any combination of anesthetic/analgesic active ingredients provided that the product is available in either a liquid (to be swallowed) or a solid dosage form (to be dissolved in the mouth and swallowed) and provided that the product is labeled according to § 341.85. If the combination contains a topical antitussive, the product must be formulated in a solid dosage form to be dissolved in the mouth. Menthol in § 341.14(b)(2) and part 356 of this chapter may be both the antitussive and the anesthetic/analgesic active ingredient provided that the product is labeled according to § 341.70(b).

(l) Any single oral antitussive active ingredient identified in § 341.14(a) may be combined with any generally recognized as safe and effective single analgesic-antipyretic active ingredient, or any combination of acetaminophen with other analgesic-antipyretic active ingredients, or any aspirin and antacid combination provided that the product is labeled according to § 341.85.

(m) Any single oral antitussive active ingredient identified in § 341.14(a) may be combined with any single oral nasal decongestant active ingredient identified in § 341.20(a) and any generally recognized as safe and effective single analgesic-antipyretic active ingredient, or any combination of acetaminophen with other analgesic-antipyretic active ingredients, or any aspirin and antacid combination provided that the product is labeled according to § 341.85.

(n) Any single oral antitussive active ingredient identified in § 341.14(a)(1) through (a)(4) may be combined with any single oral nasal decongestant active ingredient identified in § 341.20(a) and any single expectorant active ingredient identified in § 341.18 and any generally recognized as safe and effective single analgesic-antipyretic active ingredient, or any combination of acetaminophen with other analgesic-antipyretic active ingredients, or any aspirin and antacid combination provided that the product is labeled according to § 341.85.

(o) Any single expectorant active ingredient identified in § 341.18 may be combined with any generally recognized as safe and effective single analgesic-antipyretic active ingredient, or any combination of acetaminophen with other analgesic-antipyretic active ingredients, or any aspirin and antacid combination provided that the product is labeled according to § 341.85.

(p) Any single expectorant active ingredient identified in § 341.18 may be combined with any single oral nasal decongestant active ingredient identified in § 341.20(a) provided that the product is labeled according to § 341.85.

(q) Any single expectorant active ingredient identified in § 341.18 may be combined with any single oral nasal decongestant active ingredient identified in § 341.20(a) and any generally recognized as safe and effective single analgesic-antipyretic active ingredient, or any combination of acetaminophen with other analgesic-antipyretic active ingredients, or any aspirin and antacid combination provided that the product is labeled according to § 341.85.

(r) Any single oral nasal decongestant active ingredient identified in

§ 341.20(a) may be combined with any generally recognized as safe and effective single analgesic-antipyretic active ingredient, or any combination of acetaminophen with other analgesic-antipyretic active ingredients, or any aspirin and antacid combination provided that the product is labeled according to § 341.85.

(s) Any single oral nasal decongestant active ingredient identified in § 341.20(a) may be combined with any generally recognized as safe and effective single oral anesthetic/analgesic active ingredient identified, or any combination of anesthetic/analgesic active ingredients provided that the product is available in either a liquid (to be swallowed) or a solid dosage form (to be dissolved in the mouth and swallowed) and provided that the product is labeled according to § 341.85.

(t) Any single oral nasal decongestant active ingredient identified in § 341.20(a) may be combined with any single antitussive active ingredient identified in § 341.14(a) or (b)(2) and any generally recognized as safe and effective single oral anesthetic/analgesic active ingredient, or any combination of anesthetic/analgesic active ingredients provided that the product is available in either a liquid (to be swallowed) or a solid dosage form (to be dissolved in the mouth and swallowed) and provided that the product is labeled according to § 341.85. If the combination contains a topical antitussive, the product must be formulated in a solid dosage form to be dissolved in the mouth.

(u) Camphor identified in § 341.14(b)(1) may be combined with menthol identified in § 341.14(b)(2) and eucalyptus oil (1.2 to 1.3 percent) provided that the product is available only in a suitable ointment vehicle and provided that the product is labeled according to § 341.85.

(v) Levmetamfetamine identified in § 341.20(b)(1) may be combined with aromatics (camphor (54 milligrams (mg)), menthol (80 mg), methyl salicylate (11 mg), and lavender oil (4 mg)) provided that the product is available only as a nasal inhaler and provided that the product is labeled according to § 341.85.

(w) Any single antitussive active ingredient identified in § 341.14(a) or (b)(2) may be combined with any generally recognized as safe and effective single oral demulcent active ingredient provided that the product is available in either a liquid (to be swallowed) or a solid dosage form (to be dissolved in the mouth and swallowed) and provided that the product is labeled according to § 341.85. If the combination contains a topical

antitussive, the product must be formulated in a solid dosage form to be dissolved in the mouth.

(x) Any single oral nasal decongestant active ingredient identified in § 341.20(a) may be combined with any generally recognized as safe and effective single oral demulcent active ingredient provided that the product is available in either a liquid (to be swallowed) or a solid dosage form (to be dissolved in the mouth and swallowed) and provided that the product is labeled according to § 341.85.

(y) Any single antitussive active ingredient identified in § 341.14(a) or (b)(2) may be combined with any single oral nasal decongestant active ingredient identified in § 341.20(a) and any generally recognized as safe and effective single oral demulcent active ingredient provided that the product is available in either a liquid (to be swallowed) or a solid dosage form (to be dissolved in the mouth and swallowed) and provided that the product is labeled according to § 341.85. If the combination contains a topical antitussive, the product must be formulated in a solid dosage form to be dissolved in the mouth.

(z) Any single antitussive active ingredient identified in § 341.14(a) or (b)(2) may be combined with any generally recognized as safe and effective single oral anesthetic/analgesic active ingredient or any combination of anesthetic/analgesic active ingredients and any generally recognized as safe and effective single oral demulcent active ingredient provided that the product is available in either a liquid (to be swallowed) or a solid dosage form (to be dissolved in the mouth and swallowed) and provided that the product is labeled according to § 341.85. If the combination contains a topical antitussive, the product must be formulated in a solid dosage form to be dissolved in the mouth.

(aa) Any single oral nasal decongestant active ingredient identified in § 341.20(a) may be combined with any generally recognized as safe and effective single oral anesthetic/analgesic active ingredient or any combination of oral anesthetic/analgesic active ingredients and any generally recognized as safe and effective single oral demulcent active ingredient provided that the product is available in either a liquid (to be swallowed) or a solid dosage form (to be dissolved in the mouth and swallowed) and provided that the product is labeled according to § 341.85.

(bb) Any single antitussive active ingredient identified in § 341.14(a) or (b)(2) may be combined with any single

oral nasal decongestant active ingredient identified in § 341.20(a) and any generally recognized as safe and effective single oral anesthetic/analgesic active ingredient identified or any combination of anesthetic/analgesic active ingredients and any generally recognized as safe and effective single oral demulcent active ingredient provided that the product is available in either a liquid (to be swallowed) or a solid dosage form (to be dissolved in the mouth and swallowed) and provided that the product is labeled according to § 341.85. If the combination contains a topical antitussive, the product must be formulated in a solid dosage form to be dissolved in the mouth.

3. Section 341.70 is amended by adding paragraph (b) to read as follows:

**§ 341.70 Labeling of OTC drug products containing ingredients that are used for treating concurrent symptoms (in either a single-ingredient or combination drug product).**

\* \* \* \* \*

(b) *For products containing menthol identified in §§ 341.14(b)(2) and 356.12(f) of this chapter.* The product contains 5 to 10 milligrams menthol. The labeling of the product contains the established name of the drug, if any, and identifies the product as a “cough suppressant/oral anesthetic” or “antitussive (cough suppressant)/oral anesthetic.” The indications shall be combined from § 341.74(b) and part 356 of this chapter. The warnings shall be combined from § 341.74(c)(1), (c)(2), and (c)(3) and part 356 of this chapter. The directions shall be: “Directions [in bold type] [bullet]<sup>1</sup> adults and children 2 years and over: dissolve lozenge slowly in the mouth. Repeat every hour as needed or as directed by a doctor. [bullet] children under 2 years of age: ask a doctor”.

4. Section 341.85 is added to subpart C to read as follows:

**§ 341.85 Labeling of permitted combinations of active ingredients.**

The statements of identity, indications, warnings, and directions for use, respectively, applicable to each ingredient in the product may be combined to eliminate duplicative words or phrases so that the resulting information is clear and understandable.

(a) *Statement of identity.* For a combination drug product that has an established name, the labeling of the product states the established name of the combination drug product, followed by the statement of identity for each ingredient in the combination, as

established in the statement of identity sections of the applicable OTC drug monographs. If there is no established name, the labeling of the product states the statement of identity for each ingredient in the combination, as established in the statement of identity sections of the applicable OTC drug monographs, unless otherwise stated in this paragraph (a).

(1) *For permitted combinations identified in § 341.40(a), (c), (f), (g), (l), (m), (n), (o), (q), and (r) containing an analgesic-antipyretic active ingredient.* The analgesic-antipyretic component of the product shall be identified as a “pain reliever” or “analgesic (pain reliever).” If the product is also labeled to relieve fever, then the analgesic-antipyretic component is identified as a “pain reliever-fever reducer” or “analgesic (pain reliever)-antipyretic (fever reducer).”

(2) [Reserved]

(b) *Indications.* The labeling of the product states, under the heading “Uses,” the indication(s) for each ingredient in the combination, as established in the indications sections of the applicable OTC drug monographs, unless otherwise stated in this paragraph (b). Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in the applicable OTC drug monographs or listed in this paragraph (b), may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) *For permitted combinations containing an analgesic-antipyretic active ingredient identified in § 341.40(a), (c), (f), (g), (l), (m), (n), (o), (q), and (r) when labeled for relief of general cough-cold symptoms and/or the common cold.*

(i) The labeling for the analgesic-antipyretic ingredients states “[bullet] temporarily relieves [bullet] minor aches and pains [bullet] headache” and “[bullet] temporarily reduces fever”.

(ii) The labeling for the cough-cold ingredient(s) may follow a separate bullet(s) or may be combined with the relieves part of the indication in paragraph (b)(1)(i) of this section.

(2) *For permitted combinations containing an analgesic-antipyretic active ingredient identified in § 341.40(a), (c), (f), (g), (m), (q), and (r) when labeled for relief of hay fever/*

<sup>1</sup>See § 201.66(b)(4) of this chapter for definition of bullet symbol.

*allergic rhinitis and/or sinusitis symptoms.*

(i) The labeling for the analgesic-antipyretic ingredients states “[bullet] temporarily relieves [bullet] minor aches and pains [bullet] headache”.

(ii) The indication(s) for the cough-cold ingredient(s) consists of the labeling for antihistamines in § 341.72(b)(1) or (b)(2) and/or nasal decongestants in § 341.80(b)(1)(ii) and/or (b)(1)(iii), as appropriate, and the labeling for any other cough-cold ingredient present in the combination. This labeling may follow a separate bullet(s) or may be combined with the indication in paragraph (b)(2)(i) of this section.

(3) *For permitted combinations containing an oral analgesic-antipyretic active ingredient identified in § 341.40(a), (c), (f), (g), (m), (q), and (r) when labeled for relief of general cough-cold symptoms and/or the common cold and for relief of hay fever/allergic rhinitis and/or sinusitis symptoms.* The labeling states both indications in paragraphs (b)(1) and (b)(2) of this section.

(4) *For permitted combinations containing an oral anesthetic-analgesic active ingredient identified in § 341.40(k), (s), (t), (z), (aa), and (bb).* The labeling for the anesthetic-analgesic ingredients in part 356 of this chapter should be used.

(5) *For permitted combinations containing camphor, menthol, and eucalyptus oil identified in § 341.40(u).* The labeling for antitussive ingredients in § 341.74(b) should be used.

(6) *For permitted combinations containing levmetamfetamine with aromatics identified in § 341.40(v).* The labeling for nasal decongestant ingredients in § 341.80(b) should be used.

(7) *Other allowable statements.* In addition to the required information identified in paragraph (b) of this section, the labeling of the combination drug product may contain any of the “other allowable statements” (if any), that are identified in the applicable OTC drug monographs, provided such statements are neither placed in direct conjunction with information required to appear in the labeling nor occupy labeling space with greater prominence or conspicuousness than the required information.

(c) *Warnings.* The labeling of the product states, under the heading “Warnings,” the warning(s) for each ingredient in the combination, as established in the warnings sections of the applicable OTC drug monographs, unless otherwise stated in paragraph (c) of this section.

(1) *For permitted combinations containing an antitussive and an analgesic-antipyretic identified in § 341.40(f), (g), (l), and (m).* The labeling states the following warnings:

(i) *For products labeled only for adults.* The following warning should be used instead of the warnings in § 341.74(c)(1) and part 343 of this chapter: “Stop use and ask a doctor if [in bold type] [bullet] pain or cough gets worse or lasts more than 7 days [bullet] fever gets worse or lasts more than 3 days [bullet] redness or swelling is present [bullet] new symptoms occur [bullet] cough comes back or occurs with rash or headache that lasts. These could be signs of a serious condition.”

(ii) *For products labeled only for children under 12 years of age.* The following warning should be used instead of the warnings in § 341.74(c)(3) and part 343 of this chapter: “Stop use and ask a doctor if [in bold type] [bullet] pain or cough gets worse or lasts more than 5 days [bullet] fever gets worse or lasts more than 3 days [bullet] redness or swelling is present [bullet] new symptoms occur [bullet] cough comes back or occurs with rash or headache that lasts. These could be signs of a serious condition.”

(iii) *For products labeled for both adults and for children under 12 years of age.* The following warning should be used instead of the warnings in § 341.74(c)(2) and part 343 of this chapter: “Stop use and ask a doctor if [in bold type] [bullet] pain or cough gets worse or lasts more than 5 days (children) or 7 days (adults) [bullet] fever gets worse or lasts more than 3 days [bullet] redness or swelling is present [bullet] new symptoms occur [bullet] cough comes back or occurs with rash or headache that lasts. These could be signs of a serious condition.”

(2) *For permitted combinations containing an expectorant and an analgesic-antipyretic identified in § 341.40(o).* The labeling states the following warnings:

(i) *For products labeled only for adults.* The warning in paragraph (c)(1)(i) of this section should be used instead of the warnings in § 341.78(c)(3) and part 343 of this chapter.

(ii) *For products labeled only for children under 12 years of age.* The warning in paragraph (c)(1)(ii) of this section should be used instead of the warnings in § 341.78(c)(3) and part 343 of this chapter.

(iii) *For products labeled for both adults and for children under 12 years of age.* The warning in paragraph (c)(1)(iii) of this section should be used instead of the warnings in § 341.78(c)(3) and part 343 of this chapter.

(3) *For permitted combinations containing a nasal decongestant and an analgesic-antipyretic identified in § 341.40(c), (g), (m), (n), (q), and (r).* The labeling states the following warnings:

(i) *For products labeled only for adults.* The following warning should be used instead of the warnings in § 341.80(c)(1)(i)(B) and part 343 of this chapter: “Stop use and ask a doctor if [in bold type] [bullet] pain or nasal congestion gets worse or lasts more than 7 days [bullet] fever gets worse or lasts more than 3 days [bullet] redness or swelling is present [bullet] new symptoms occur”.

(ii) *For products labeled for only children under 12 years of age.* The following warning should be used instead of the warnings in § 341.80(c)(1)(ii)(B) and part 343 of this chapter: “Stop use and ask a doctor if [in bold type] [bullet] pain or nasal congestion gets worse or lasts more than 5 days [bullet] fever gets worse or lasts more than 3 days [bullet] redness or swelling is present [bullet] new symptoms occur”.

(iii) *For products labeled for both adults and children under 12 years of age.* The following warning should be used instead of the warnings in § 341.80(c)(1)(iii) and part 343 of this chapter: “Stop use and ask a doctor if [in bold type] [bullet] pain or nasal congestion gets worse or lasts more than 5 days (children) or 7 days (adults) [bullet] fever gets worse or lasts more than 3 days [bullet] redness or swelling is present [bullet] new symptoms occur”.

(4) *For permitted combinations containing an antihistamine combined with an oral antitussive.* The labeling states the warning “When using this product [in bold type] [bullet] may cause marked drowsiness.” The word “marked” may be deleted from the warning upon petition under the provisions of § 10.30 of this chapter provided adequate data are submitted to demonstrate that the combination product does not cause a significant increase in drowsiness as compared with each active ingredient when tested alone. The petition and the data it contains will be maintained in a permanent file for public review in the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

(5) *For permitted combinations containing camphor, menthol, and eucalyptus oil identified in § 341.40(u).* The labeling states the warnings for topical antitussive ingredients in § 341.74(c).

(6) *For permitted combinations containing levmetamfetamine with aromatics identified in § 341.40(v).* The labeling states the warnings for topical nasal decongestant ingredients in § 341.80(c)(2).

(d) *Directions.* The labeling of the product states, under the heading "Directions," directions that conform to the directions established for each ingredient in the directions sections of the applicable OTC drug monographs, unless otherwise stated in paragraph (d) of this section. When the time intervals or age limitations for administration of the individual ingredients differ, the directions for the combination product may not exceed any maximum dosage limits established for the individual ingredients in the applicable OTC drug monograph.

(1) *For permitted combinations containing an anesthetic/analgesic and/or a demulcent in a liquid dosage form identified in § 341.40(k), (s), (t), (w), (x), (y), (z), (aa), and (bb).* The labeling states "[optional, bullet] gargle, swish around, or keep in the mouth for at least 1 minute and then swallow. Do not spit out."

(2) *For permitted combinations containing camphor, menthol, and eucalyptus oil identified in § 341.40(u).* The labeling states the directions for topical antitussive ingredients in § 341.74(d).

(3) *For permitted combinations containing levmetamfetamine with aromatics identified in § 341.40(v).* The labeling states the directions for topical nasal decongestant ingredients in § 341.80(d)(2)(i) and (d)(2)(viii).

Dated: August 20, 2002.

**Margaret M. Dotzel,**

*Assistant Commissioner for Policy.*

[FR Doc. 02-32158 Filed 12-20-02; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 500

[Docket No. 01N-0401]

RIN 0910-AC45

#### Revision of the Definition of the Term "No Residue" in the New Animal Drug Regulations

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending its

regulations regarding carcinogenic compounds used in food-producing animals. Specifically, FDA is deleting the operational definition of the term "no residue" and is making conforming amendments to other parts of these regulations. FDA is making these amendments in response to a legal opinion issued by the Department of Justice (DOJ), Office of Legal Counsel, which concluded that the operational definition of "no residue" is not legally supportable.

**DATES:** This rule is effective January 22, 2003.

**FOR FURTHER INFORMATION CONTACT:** Steven D. Brynes, Center for Veterinary Medicine (HFV-151), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-6975.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In the *Federal Register* of January 17, 2002 (67 FR 2384), FDA proposed a rule amending its regulations regarding carcinogenic compounds used in food-producing animals. Specifically, the agency proposed to delete the operational definition of the term "no residue" and proposed to make conforming amendments to other parts of these regulations. FDA proposed these amendments in response to a 1995 legal opinion issued by the DOJ, Office of Legal Counsel, which concluded that the operational definition of "no residue" is not legally supportable. We provided 90 days for comment on the proposed rule.

FDA proposed the original regulations regarding carcinogenic compounds used in food-producing animals in the *Federal Register* of October 31, 1985 (50 FR 45530), in order to implement the diethylstilbestrol (DES) proviso of the Delaney Clause in sections 409, 512, and 721 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348, 360b, and 379e). The DES proviso provides that FDA can approve an animal feed additive or a new animal drug that induces cancer if we find that "no residue" of such additive or drug " \* \* \* will be found (by methods of examination prescribed or approved by the Secretary by regulations \* \* \*), in any edible portion of such animals after slaughter \* \* \*" (see, e.g., excerpts from 21 U.S.C. 360b(d)(1)(I)). We issued final regulations based on this proposal in the *Federal Register* of December 31, 1987 (52 FR 49572).

The final rule, which was codified in part 500 (21 CFR part 500) at §§ 500.80 through 500.92, included an operational definition of "no residue" (§ 500.84). That definition provides FDA will

consider that "no residue" of a carcinogenic compound remains in the edible tissue of treated animals when the " \* \* \* concentration of the residue of carcinogenic concern in the total diet of people will not exceed  $S_o$  \* \* \*." Section 500.82 defines  $S_o$  as "the concentration of the test compound in the total diet of test animals that corresponds to a maximum lifetime risk of cancer in the test animals of 1 in 1 million \* \* \*." Section 500.82 further provides that FDA will assume that this " $S_o$  will correspond to the concentration of residue of carcinogenic concern in the total human diet that represents no significant increase in the risk of cancer to people." Therefore, under these regulations, it is possible for a residue detected by the method approved by FDA to be considered "no residue," if the detectable residue is below the level that corresponds to a maximum lifetime risk of cancer in the test animals of 1 in 1 million ("insignificant risk" or "no significant risk" level).

In the final rule of December 31, 1987, we explained the rationale for this operational definition of "no residue."

The preamble to the final rule stated: Application of " \* \* \* the "DES Proviso," hinges therefore on the finding of "no residue" of the substance in edible products.

As a practical matter, however, FDA has been unable to conclude that no trace of any given substance will remain in edible products. The new procedures, therefore, provide an operational definition of "no residue." That is, the procedures are designed to permit the determination of the concentration of residue of a carcinogenic compound that presents an insignificant risk of cancer to the consuming public. That concentration corresponds to a maximum lifetime risk of cancer to the test animal on the order of 1 in 1 million. Thus, the procedures provide for a quantitative estimation of the risk of cancer presented by the residues of a carcinogenic compound proposed for use in food-producing animals. "No residue" remains in food products when conditions of use, including any required preslaughter withdrawal period or milk discard time, ensure that the concentration of the residue of carcinogenic concern in the total diet of people will not exceed the concentration that has been determined to present an insignificant risk. (52 FR 49572, December 31, 1987.)

On October 13, 1995, the DOJ, Office of Legal Counsel, responding to questions posed by the Environmental Protection Agency and FDA, issued a legal opinion entitled "The Food and Drug Administration's Discretion to Approve Methods of Detection and to Define the Term "No Residue" Pursuant to the Federal Food, Drug, and Cosmetic Act" (DOJ Opinion on FDA Implementation of the DES Proviso) (Ref. 1). One of the questions addressed by the opinion asked whether FDA has

the discretion to determine that an edible tissue contains "no residue" when a method of detection reveals the presence of residues of carcinogenic concern that is below the "no significant risk" level.

In considering that question, the DOJ reasoned that "[g]iving 'no residue' its ordinary meaning, the detected presence of any residue by an approved method would be incompatible with a finding of 'no residue,' and thus would preclude a finding that the [DES] proviso applies." Furthermore, the opinion stated that "[t]here is nothing \* \* \* to suggest that a finding of 'no residue' could be based upon the detected presence of residue, however insignificant \* \* \*."

This conclusion that "FDA may not accept a finding that residue is present, but below the 'no significant risk' level, as satisfying the statutory requirement of 'no residue,'" contradicts FDA's present operational definition of "no residue" issued in § 500.84. This final rule amends the regulations to make them consistent with the DOJ legal opinion.

Specifically, the agency is revising the regulations to delete the operational definition of "no residue." Therefore, for a substance to be approved under the DES proviso, no residue can be detectable by the approved regulatory method; that is, any residue in the target tissue must be nondetectable or below the limit of detection (LOD) of the approved regulatory method. Inasmuch as: (1) The regulatory method currently is defined in § 500.82 as the aggregate of all experimental procedures for measuring and confirming the presence of the marker residue in the target tissue and (2) FDA must, for regulatory and scientific reasons, be capable of identifying the detected residue with a high degree of certainty, FDA is defining the LOD, for the purposes of this rule, as the lowest concentration of analyte that can be confirmed by the approved regulatory method.

Thus, the sponsor of a carcinogenic compound must satisfy the following conditions with respect to the sponsor's proposed regulatory method. First, the sponsor must provide a method that is at least capable of reliably quantitating residues at and above the  $R_m$  (the concentration of marker residue that the regulatory method must be capable of measuring in the target tissue), which we will continue to calculate in the manner provided in the current regulations in §§ 500.80 through 500.92. Therefore, FDA will use the "no significant risk" level determined through appropriate toxicological testing as a benchmark for assessing the acceptability of a regulatory method.

Second, under the final regulations, a sponsor must provide sufficient data to permit us to estimate the LOD of the method as defined previously and in proposed § 500.82. Given the first requirement, the LOD will likely be below the  $R_m$ , and consequently, the LOD will replace the  $R_m$  as the "no residue" determinant.

Under the final regulations, we have defined the LOD as the lowest concentration of analyte that can be confirmed by the approved regulatory method. Believing that there are several valid procedures to estimate the LOD, we have chosen not to specify in this final rule any one specific procedure or protocol as a standard requirement for establishing the LOD. Thus, under the final rule, we will consider and evaluate any reasonable, generally recognized procedure that is consistent with the aims and requirements of regulatory exposure estimation and risk assessment practices of FDA.

## II. Comments on the Proposed Rule

The agency received no comments on the proposed rule.

## III. Environmental Impact

The agency has carefully considered the potential environmental impacts of this final rule. The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601-612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Regulatory Flexibility Act requires agencies to examine regulatory alternatives for small entities, if the rule may have a significant impact on a substantial number of small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before requiring any expenditure by State, local, and tribal

governments, in the aggregate, or by the private sector, of \$100 million in any one year (adjusted annually for inflation).

We conclude that this final rule is consistent with the principles set forth in the Executive order and in these two statutes. We expect only very slight, if any, compliance costs to result from the final rule. As a result, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. Further, we certify that the final rule would not have a significant economic impact on a substantial number of small entities. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the final rule, because the final rule is not expected to result in any 1-year expenditure that would exceed \$100 million adjusted for inflation. The current inflation-adjusted statutory threshold is about \$110 million.

We are amending the regulations regarding the carcinogenic compounds used in food-producing animals by deleting the operational definition of "no residue." Under the final rule, for a carcinogenic compound to be approved, no residue of the compound can be detectable using an approved regulatory method. Any residue in the target tissue would have to be nondetectable or below the LOD.

As stated previously, we are making this change in response to a DOJ opinion that the current operational definition of "no residue" is not legally supportable. The benefit of this change would be an increase in the clarity of the current regulations concerning carcinogenic compounds used in food-producing animals.

The deletion of the definition is not expected to impose any measurable compliance costs on the sponsors of compounds that are submitted to us for approval as new animal drugs or feed additives. The submission of data to meet the requirements of the final rule will be in place of, and nearly identical to, data that were submitted to meet the operational definition of "no residue." We do not expect a noticeable increase in the level of effort expended in preparing a submission. To the extent that incremental compliance costs exist, we believe them to be inconsequential. In theory, another result of this final rule might be the possible increase in the withdrawal period for some number of compounds submitted for approval, which would represent some loss of value to the sponsor. We do not have the data to estimate this value, but believe it to be very small.

The Regulatory Flexibility Act requires agencies to examine regulatory alternatives for small entities, if the rule may have a significant economic impact on a substantial number of small entities. Since we have determined that the possible compliance costs to any sponsor would be extremely small, if they occur at all, we are certifying that the final rule would not have a significant economic impact on a substantial number of small entities. No further small business analysis is required.

#### V. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the final rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

#### VI. Paperwork Reduction Act of 1995

The information collected in § 500.88 has been approved by the Office of Management and Budget (OMB) under OMB control number 0910-0032. This final rule amends § 500.88 but does not substantively modify the information collection. Therefore, clearance by OMB under the Paperwork Reduction Act of 1995 is not required.

#### VII. Reference

The following reference has been placed on display in the Dockets Management Branch (see ADDRESSES) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. U.S. Department of Justice, "The Food and Drug Administration's Discretion to Approve Methods of Detection and to Define the Term 'No Residue' Pursuant to the Federal Food, Drug, and Cosmetic Act: Memorandum Opinion for the Assistant Administrator and General Counsel Environmental Protection Agency and the General Counsel Department of Health and Human Services," October 13, 1995.

#### List of Subjects in 21 CFR Part 500

Animal drugs, Animal feeds, Cancer, Labeling, Packaging and containers, Polychlorinated biphenyls (PCBs).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner

of Food and Drugs, 21 CFR part 500 is amended as follows:

#### PART 500—GENERAL

1. The authority citation for 21 CFR part 500 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 353, 360b, 371.

#### § 500.80 [Amended]

2. Section 500.80 *Scope of this subpart* is amended in paragraph (a) in the third sentence by removing the phrase "provides an operational definition of no residue and".

#### § 500.82 [Amended]

3. Section 500.82 *Definitions* is amended in paragraph (b) as follows:

a. By alphabetically adding "*Limit of detection (LOD)* means the lowest concentration of analyte that can be confirmed by the approved regulatory method.";

b. By removing from the definition of "*Marker residue*" the phrase "permitted concentration" and by adding in its place " $S_m$ ";

c. By removing from the definition of "*Preslaughter withdrawal period or milk discard time*" the phrase "for the residue of carcinogenic concern in the edible product to deplete to the concentration that will satisfy the operational definition of no residue" and by adding in its place "at which no residue is detectable in the edible product using the approved regulatory method (i.e., the marker residue is below the LOD)";

d. By removing from the definition of " $R_m$ " the phrase "in the last tissue to deplete to its permitted concentration"; and

e. By removing the definition of " $S_m$ " and by adding in its place " $S_m$  means the concentration of residue in a specific edible tissue corresponding to a maximum lifetime risk of cancer in the test animals of 1 in 1 million".

4. Section 500.84 is amended by revising the section heading and paragraph (c)(2) and by adding two sentences at the end of paragraph (c)(1) and adding paragraph (c)(3) to read as follows:

#### § 500.84 Conditions for approval of the sponsored compound.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \* Because the total diet is not derived from food-producing animals, FDA will make corrections for food intake. FDA will designate as  $S_m$  the concentration of residue in a specific edible tissue corresponding to a maximum lifetime risk of cancer in test animals of 1 in 1 million.

(2) From the appropriate residue chemistry data FDA will calculate the  $R_m$  as described in § 500.86(c). The sponsor must provide a regulatory method in accordance with § 500.88(b). FDA will calculate the LOD of the method from data submitted by the sponsor under § 500.88. The LOD must be less than or equal to  $R_m$ .

(3) FDA will conclude that the provisions of this subpart are satisfied when no residue of the compound is detectable (that is, the marker residue is below the LOD) using the approved regulatory method under the conditions of use of the sponsored compound, including any required preslaughter withdrawal period or milk discard time.

5. Section 500.88 is amended by revising paragraphs (b) and (c) to read as follows:

#### § 500.88 Regulatory method.

\* \* \* \* \*

(b) The regulatory method must be able to confirm the identity of the marker residue in the target tissue at a minimum concentration corresponding to the  $R_m$ . FDA will determine the LOD from the submitted analytical method validation data.

(c) FDA will publish in the **Federal Register** the complete regulatory method for ascertaining the marker residue in the target tissue in accordance with the provisions of sections 409(c)(3)(A), 512(d)(1)(I), and 721(b)(5)(B) of the act.

Dated: December 17, 2002.

**Margaret M. Dotzel,**

*Assistant Commissioner for Policy.*

[FR Doc. 02-32216 Filed 12-20-02; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1 and 602

[TD 9033]

RIN 1545-BB36

#### Section 6038—Returns Required With Respect to Controlled Foreign Partnerships

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulation.

**SUMMARY:** This document contains final and temporary regulations relating to controlled foreign partnerships. This document requires that the United States partner must follow the filing requirements that are specified in the



instructions for Form 8865. The text of the temporary regulation also serves as the text of the proposed regulation set forth in the Proposed Rules section in this issue of the **Federal Register**.

**DATES: Effective Date:** These regulations are effective December 23, 2002.

**Applicability Date:** For dates of applicability, see §§ 1.6038-3(l) and 1.6038-3T(l).

**FOR FURTHER INFORMATION CONTACT:**

Tasheaya Warren, (202) 622-3860 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1617. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Background**

In 1997, Congress amended section 6038 to require information reporting by certain United States persons with direct and indirect interests in controlled foreign partnerships (CFPs). Treas. Reg. § 1.6038-3 was published in 1999 (TD 8850, 64 FR 72545 (1999)) (the "1999 Final Regulations") and provides guidance regarding the reporting requirements under section 6038 with respect to CFPs. A United States person required to report under section 6038 with respect to a CFP must file Form 8865, Return of U.S. Persons With Respect To Certain Foreign

Partnerships. In addition to the reporting obligation imposed on certain partners in foreign partnerships under section 6038, section 6031 requires certain foreign partnerships to file Form 1065, U.S. Return of Partnership Income or Form 1065-B, U.S. Return for Electing Large Partnerships.

Treas. Reg. § 1.6038-3(j)(1) provides that if a foreign partnership completes and files Form 1065 and a United States partner is required to file Form 8865 with respect to that partnership, the United States partner must attach to its Form 8865 copies of the Form 1065 schedules filed by the partnership instead of completing the Form 8865 schedules that are equivalent to Form 1065 schedules. This rule was added to the 1999 Final Regulations to reduce the burden imposed by those regulations where there is an overlap between section 6038 and section 6031. However, this rule does not directly address the filing requirements for Form 8865, when a United States partner files electronically its income tax return (including any attachments such as Form 8865).

**Explanation of Provisions**

To facilitate revisions to the filing requirements for Form 8865 (such as electronic filing of Form 8865), the temporary regulation amends Treas. Reg. § 1.6038-3 to provide that a United States partner must follow the filing requirements that are specified in the instructions for Form 8865 when the United States partner must file Form 8865 and the partnership completes and files Form 1065 or Form 1065-B. As a transitional matter, for the next filing season it is anticipated that the instructions for Form 8865 will continue to provide for the existing filing procedure pursuant to which a United States partner attaches certain schedules from Form 1065 or Form 1065-B to its Form 8865 as well as provide for an alternative electronic filing procedure for Form 8865.

The final regulation also makes two revisions to the 1999 Final Regulations. If a U.S. person is required to file Form 8865, Treas. Reg. § 1.6038-3(g)(1) provides that a U.S. person must submit any information that Form 8865 or its accompanying instructions require to be submitted. The final regulation clarifies the requirement under Treas. Reg. § 1.6038-3, as reflected in the Form 8865 instructions, that the United States partner must include the foreign partnership's name, address and taxpayer identification number on Form 8865. The final regulation also corrects a cross reference in Treas. Reg. § 1.6038-3(b)(9) (Example 1).

**Special Analyses**

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

**Drafting Information**

The principal author of this regulation is Tasheaya Warren, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in its development.

**List of Subjects**

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

**Amendments to the Regulations**

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

**PART 1—INCOME TAXES**

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

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

**Par. 2.** Section 1.6038-3 is amended as follows:

1. The last sentence in paragraph (b)(9) *Example 1* is revised.
2. Paragraphs (g)(1)(i) through (g)(1)(v) are redesignated as paragraphs (g)(1)(ii) through (g)(1)(vi), respectively.
3. New paragraph (g)(1)(i) is added.
4. Paragraphs (j) and (l) are revised.

The revisions and addition read as follows:

**§ 1.6038-3 Information returns required of certain United States persons with respect to controlled foreign partnerships (CFPs).**

\* \* \* \* \*

(b) \* \* \*  
(9) \* \* \*

Example 1. Sole U.S. partner does not own more than a fifty-percent interest. \* \* \*

See also § 1.6046A-1(f)(1) regarding the overlap between sections 6038B and 6046A).

\* \* \* \* \*

(g) \* \* \* (1) \* \* \*

(i) The name, address, and taxpayer identification number (if any) of the foreign partnership of which the person qualified as a controlling fifty-percent partner or a controlling ten-percent partner;

\* \* \* \* \*

(j) [Reserved]. For further guidance, see § 1.6038-3T(j).

\* \* \* \* \*

(l) *Effective date.* Except as otherwise provided, this section shall apply for tax years of a foreign partnership ending on or after December 31, 2000. For tax years of a foreign partnership prior to December 23, 2002, see § 1.6038-3(j) in effect prior to these amendments (see 26 CFR part 1 revised April 1, 2002).

**Par. 3.** Section 1.6038-3T is added to read as follows:

**§ 1.6038-3T Information returns required of certain United States persons with respect to controlled foreign partnership (CFPs) (temporary).**

(a) Through (i)(2) [Reserved]. For further guidance, see § 1.6038-3(a) through (i)(2).

(j) *Overlap with section 6031.* A partner may be required to file Form 8865 under this section and the foreign partnership in which it is a partner may also be required to file a Form 1065 or Form 1065-B under section 6031(e) for the same partnership tax year. For cases where a United States person is a controlling fifty-percent partner or a controlling ten-percent partner with respect to a foreign partnership, and that foreign partnership completes and files Form 1065 or Form 1065-B, the instructions for Form 8865 will specify the filing requirements that address this overlap in reporting obligations.

(k) [Reserved]. For further guidance, see § 1.6038-3(k).

(l) *Effective date.* This section shall apply to tax years of a foreign partnership ending on or after December 23, 2002. The applicability of this section expires on December 20, 2005.

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

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

Authority: 26 U.S.C. 7805.

**Par. 5.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

**§ 602.101 OMB Control numbers.**

\* \* \* \* \*

(b) \* \* \*

CFR part or section where identified and described	Current OMB control No.
1.6038-3T .....	1545-1617

**Robert E. Wenzel,**  
*Deputy Commissioner of Internal Revenue.*

Approved: December 5, 2002.

**Pamela F. Olson,**  
*Assistant Secretary of the Treasury.*  
[FR Doc. 02-32152 Filed 12-20-02; 8:45 am]

**BILLING CODE 4830-01-P**

**LIBRARY OF CONGRESS**

**Copyright Office**

**37 CFR Part 201**

[Docket No. 2002-5A]

**Notice of Termination**

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Interim rule.

**SUMMARY:** The Copyright Office is announcing an interim regulation governing the form, content, and manner of service of notices of termination of transfers or licenses of copyright that were granted in or after 1978. Such notices may be served, for the first time, commencing January 1, 2003. The interim regulation is based on a proposed regulation recently published in the **Federal Register**.

**EFFECTIVE DATE:** January 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** David O. Carson, General Counsel. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

**SUPPLEMENTARY INFORMATION:** On December 20, 2002, the Copyright Office published a proposed regulation governing the form, content, and manner of service of notices of termination to terminate transfers or licenses of copyright that were granted in or after 1978. Such notices of termination are permitted pursuant to 17 U.S.C. 203, and may be served, for the first time, commencing January 1, 2003.

Because the comment period for the proposed regulations will extend into 2003, and because it is necessary to have in place a regulation governing the form, content, and manner of service of these notices of termination on January 1, 2003, so that persons entitled to serve such notices will know the requirements for the notices, the Office is announcing this interim regulation. The regulation will be in effect only until the Office has had the opportunity to consider the comments received in response to the notice of proposed rulemaking, and to publish a final regulation.

The interim regulation is identical to the proposed regulation with one exception. The proposed regulation amends § 201.10(b)(1)(i) of the Copyright Office regulations to require that a notice of termination pursuant to section 17 U.S.C. 304 must identify whether the termination is made under section 304(c) or section 304(d). Because this proposed amendment would change established practice with respect to terminations under section 304(c), and because we do not believe it would be prudent to change the requirements for section 304 notices of termination on such short notice, that proposed amendment is not included in the interim regulation.

Because it is necessary to have such a regulation in place by January 1, 2003, the Register of Copyrights finds that notice and public procedure are impracticable and contrary to public interest and that good cause exists for publication of this interim regulation less than 30 days before its effective date and without first seeking public comment.

The entire text of § 201.10, as amended, may be found on the Copyright Office Web site at <http://www.copyright.gov/docs/203.html>.

**List of Subjects in 37 CFR Part 201**

Copyright.

In consideration of the foregoing, 37 CFR part 201 is amended as follows:

**PART 201—GENERAL PROVISIONS**

1. The authority citation for part 201 continues to read as follows:

**Authority:** 17 U.S.C. 702.

2. Section 201.10 is amended as follows:

(a) By revising the section heading and the first sentence of the introductory text.

(b) By revising paragraph (b)(1) introductory text.

(c) By revising paragraph (b)(1)(v).

(d) By revising paragraph (b)(1)(vii)(B).

(e) By redesignating paragraph (b)(2) as paragraph (b)(3); and adding a new paragraph (b)(2).

(f) By revising newly designated paragraph (b)(3).

(g) By revising paragraph (c)(1) and (c)(2).

(h) By redesignating paragraphs (c)(3) and (c)(4) as paragraphs (c)(4) and (c)(5), respectively; and adding a new paragraph (c)(3).

(i) By revising the introductory text of paragraph (d)(2).

(j) By revising the first sentence of paragraph (d)(4).

(k) By revising paragraph (e)(1).

(l) By revising paragraph (e)(2).

The additions and revisions to § 201.10 read as follows:

**§ 201.10 Notices of termination of transfers and licenses.**

This section covers notices of termination of transfers and licenses under sections 203, 304(c) and 304(d) of title 17, of the United States Code. \* \*

\*

\* \* \* \* \*

(b) \* \* \*

(1) A notice of termination covering the extended renewal term under sections 304(c) and 304(d) of title 17, U.S.C., must include a clear identification of each of the following:

\* \* \* \* \*

(v) The effective date of termination;

\* \* \* \* \*

(vii) \* \* \*

(B) A statement that, to the best knowledge and belief of the person or persons signing the notice, the notice has been signed by all persons whose signature is necessary to terminate the grant under section 304 of title 17, U.S.C., or by their duly authorized agents.

(2) A notice of termination of an exclusive or nonexclusive grant of a transfer or license of copyright or of any right under a copyright, executed by the author on or after January 1, 1978, under section 203 of title 17, U.S.C., must include a clear identification of each of the following:

(i) A statement that the termination is made under section 203;

(ii) The name of each grantee whose rights are being terminated, or the grantee's successor in title, and each address at which service of the notice is being made;

(iii) The date of execution of the grant being terminated and, if the grant covered the right of publication of a work, the date of publication of the work under the grant;

(iv) For each work to which the notice of termination applies, the title of the

work and the name of the author or, in the case of a joint work, the authors who executed the grant being terminated;

and, if possible and practicable, the original copyright registration number;

(v) A brief statement reasonably identifying the grant to which the notice of termination applies;

(vi) The effective date of termination; and

(vii) In the case of a termination of a grant executed by one or more of the authors of the work where the termination is exercised by the successors of a deceased author, a listing of the names and relationships to that deceased author of all of the following, together with specific indication of the person or persons executing the notice who constitute more than one-half of that author's termination interest: That author's surviving widow or widower; and all of that author's surviving children; and, where any of that author's children are dead, all of the surviving children of any such deceased child of that author; however, instead of the information required by this paragraph (b)(2)(vii), the notice may contain both of the following:

(A) A statement of as much of such information as is currently available to the person or persons signing the notice, with a brief explanation of the reasons why full information is or may be lacking; together with

(B) A statement that, to the best knowledge and belief of the person or persons signing the notice, the notice has been signed by all persons whose signature is necessary to terminate the grant under section 203 of title 17, U.S.C., or by their duly authorized agents.

(3) Clear identification of the information specified by paragraphs (b)(1) and (b)(2) of this section requires a complete and unambiguous statement of facts in the notice itself, without incorporation by reference of information in other documents or records.

(c) *Signature.* (1) In the case of a termination of a grant under section 304(c) or section 304(d) executed by a person or persons other than the author, the notice shall be signed by all of the surviving person or persons who executed the grant, or by their duly authorized agents.

(2) In the case of a termination of a grant under section 304(c) or section 304(d) executed by one or more of the authors of the work, the notice as to any one author's share shall be signed by that author or by his or her duly authorized agent. If that author is dead, the notice shall be signed by the number

and proportion of the owners of that author's termination interest required under section 304(c) or section 304(d), whichever applies, of title 17, U.S.C., or by their duly authorized agents, and shall contain a brief statement of their relationship or relationships to that author.

(3) In the case of a termination of a grant under section 203 executed by one or more of the authors of the work, the notice shall be signed by each author who is terminating the grant or by his or her duly authorized agent. If that author is dead, the notice shall be signed by the number and proportion of the owners of that author's termination interest required under section 203 of title 17, U.S.C., or by their duly authorized agents, and shall contain a brief statement of their relationship or relationships to that author.

\* \* \* \* \*

(d) \* \* \*

(2) The service provision of section 203, section 304(c) or section 304(d) of title 17, U.S.C., whichever applies, will be satisfied if, before the notice of termination is served, a reasonable investigation is made by the person or persons executing the notice as to the current ownership of the rights being terminated, and based on such investigation:

\* \* \* \* \*

(4) Compliance with the provisions of paragraphs (d)(2) and (d)(3) of this section will satisfy the service requirements of section 203, section 304(c), or section 304(d) of title 17, U.S.C., whichever applies. \* \* \*

(e) *Harmless errors.* (1) Harmless errors in a notice that do not materially affect the adequacy of the information required to serve the purposes of section 203, section 304(c), or section 304(d) of title 17, U.S.C., whichever applies, shall not render the notice invalid.

(2) Without prejudice to the general rule provided by paragraph (e)(1) of this section, errors made in giving the date or registration number referred to in paragraph (b)(1)(iii), (b)(2)(iii), or (b)(2)(iv) of this section, or in complying with the provisions of paragraph (b)(1)(vii) or (b)(2)(vii) of this section, or in describing the precise relationships under paragraph (c)(2) or (c)(3) of this section, shall not affect the validity of the notice if the errors were made in good faith and without any intention to deceive, mislead, or conceal relevant information.

\* \* \* \* \*

Dated: December 17, 2002.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 02-32414 Filed 12-20-02; 8:45 am]

BILLING CODE 1410-30-P

**POSTAL SERVICE**

**39 CFR Part 111**

**Change in Administrative Charges for Refunds of Unused Meter Stamps and Returned Business Reply Mail Mailpieces With Postage Affixed**

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the *Domestic Mail Manual* (DMM) to update the administrative charges for processing refunds for unused meter stamps and business reply mail (BRM) pieces returned with postage affixed. These charges have not been increased for the past 20 years, and are updated to reflect the current hourly cost for processing the refunds. This final rule also splits the discussion of refunds for unused metered postage and refunds for PC Postage indicia into separate sections.

**EFFECTIVE DATE:** January 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Patricia Bennett (703) 292-3639 or Samuel J. Koroma (703) 292-3990.

**SUPPLEMENTARY INFORMATION:** On October 15, 2002, the Postal Service published for public comment in the *Federal Register* a proposed rule (67 FR 63582-63583) to update the administrative charges for processing refunds for unused meter stamps and returned business reply mail (BRM) with postage affixed. The Postal Service also invited comments on the proposed rule from interested parties and accepted comments until November 14, 2002. No comments were received during the comment period. This final rule contains the DMM standards adopted by the Postal Service after the comment period ended.

The *Domestic Mail Manual* is revised as follows. The changes are incorporated by reference in the *Code of Federal Regulations*. See CFR part 111.

**List of Subjects in 39 CFR Part 111**

Administrative practice and procedure, Postal Service.

**PART 111—[AMENDED]**

1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001, 3011, 3201, 3219, 3403-3406, 3621, 3626, 5001.

2. Revise *Domestic Mail Manual* (DMM) as set forth below:

**Domestic Mail Manual (DMM)**

\* \* \* \* \*

**P Postage and Payment Methods**

**P000 Basic Information**

*P010 General Standards*

\* \* \* \* \*

*P014 Refunds and Exchanges*

\* \* \* \* \*

**2.0 POSTAGE AND FEES REFUNDS**

\* \* \* \* \*

[Revise title and text of 2.5 to read as follows:]

**2.5 Refunds for Metered Postage, Except for PC Postage Indicia**

A refund for complete, legible, and valid unused indicia printed on unmailed envelopes, wrappers, or labels is made under 3.2. The request is submitted as follows:

- a. Only the meter licensee may request the refund.
- b. The licensee must submit the refund request within 60 days from the dates shown in the indicia.
- c. The licensee must submit the request, along with the items bearing the unused postage, to the licensing post office. The request is processed by the Postal Service.
- d. Charges for processing a refund request are as follows:

(1) If the total face value of the indicia is \$350 or less, the Postal Service charges 10% of the face value.

(2) If the total face value is more than \$350, the Postal Service charges \$35 per hour, or fraction thereof, for the actual hours to process the refund, with a minimum charge of \$35.

[Renumber current 2.6 through 2.11 as 2.7 through 2.12, respectively. Add new 2.6 to read as follows:]

**2.6 Refunds for PC Postage**

A refund for complete, legible, and valid unused PC Postage indicia printed on unmailed envelopes, wrappers, or labels is made under 3.2. The request is submitted as follows:

- a. Only the PC Postage licensee may request the refund.

b. The licensee must submit the refund request within 30 days from the dates shown in the indicia.

c. The licensee must submit the request, along with the items bearing the unused postage, to the system provider. The request is processed by the provider, not the Postal Service.

d. The provider may charge for processing refund requests.

\* \* \* \* \*

**2.9 Applying for Refund**

[Revise 2.9 to read as follows:]

Except for refunds for metered postage under 2.5 or for PC Postage indicia under 2.6, the customer must apply for a refund on PS Form 3533; submit it to the postmaster; and provide the envelope, wrapper, or a part of it showing the names and addresses of the sender and addressee, canceled postage and postal markings, or other evidence of postage and fees paid.

**2.10 Ruling on Refund Request**

Refund requests are decided based on the specific type of postage or mailing:

\* \* \* \* \*

[Revise item b to read as follows:]

b. PC Postage systems. The system provider grants or denies requests for refunds for indicia printed by PC Postage systems under 2.6 and 3.2, using established Postal Service criteria. For dated PC Postage indicia only, the licensee may appeal a decision through the manager of Postage Technology Management, Postal Service Headquarters. The original meter indicia must be submitted with the appeal. The appeal must be submitted within 30 days of the original decision. The customer may appeal a decision on indicia lacking a date through the postmaster to the RCSC.

\* \* \* \* \*

**2.12 Business Reply Mail**

[Revise renumbered 2.12 by replacing "\$15" with "\$35" to read as follows:]

\* \* \* A charge of \$35 per hour, or fraction thereof, is assessed for the workhours used to process the refund.

\* \* \* \* \*

We will also publish an appropriate amendment to 39 CFR 111.3 to reflect these changes.

**Stanley F. Mires,**  
Chief Counsel, Legislative.

[FR Doc. 02-32181 Filed 12-20-02; 8:45 am]

BILLING CODE 7710-12-P

**ENVIRONMENTAL PROTECTION  
AGENCY****40 CFR Part 52**

[MA087-7215a; A-1-FRL-7418-7]

**Approval and Promulgation of Air  
Quality Implementation Plans;  
Massachusetts; Low Emission Vehicle  
Program****AGENCY:** Environmental Protection  
Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts on August 9, 2002 and August 26, 2002. The SIP revision amends the Massachusetts Low Emission Vehicle (LEV) program that is currently contained in the federally-approved SIP by replacing it with a revised version of the LEV program adopted on December 24, 1999. EPA proposed to approve this on October 15, 2002 (67 FR 63583), and received comments from five parties, four of which supported the action fully and one of which outlined some concerns. The regulations adopted by Massachusetts now include the California LEV II motor vehicle emission standards effective in model year 2004, the California LEV I medium-duty standards effective in model year 2003 and the smog index label specification effective in model year 2002. Massachusetts has adopted these revisions to reduce emissions of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) in accordance with the requirements of the Clean Air Act (CAA). In addition, Massachusetts has worked to ensure that its motor vehicle emission program is identical to California's, as required by section 177 of the CAA. EPA is approving the revised version Massachusetts LEV program adopted on December 24, 1999, with the exception of the zero emission vehicle (ZEV) program. This action is being taken under section 110 of the Clean Air Act.

**EFFECTIVE DATE:** This rule will become effective on January 22, 2003.

**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 and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

**FOR FURTHER INFORMATION CONTACT:**  
Robert C. Judge, (617) 918-1045, or  
[judge.robert@epa.gov](mailto:judge.robert@epa.gov).

**SUPPLEMENTARY INFORMATION:** On October 15, 2002 (67 FR 63583), EPA published a Notice of Proposed Rulemaking (NPR) for the Commonwealth of Massachusetts, and received comments that are summarized and responded to below. EPA is now approving a SIP revision submitted by the Commonwealth of Massachusetts on August 9, 2002 and August 26, 2002 which amends the Massachusetts LEV I Program that is currently contained in the federally-approved SIP by replacing it with a revised version of the LEV program. As discussed in the NPR for this action, EPA is not taking action on Massachusetts ZEV program at this time.

Under section 177 of the CAA, States adopting California's motor vehicle emission standards must adopt standards that are identical to California standards. The ZEV program, which California has intended to work in conjunction with the California LEV program, has undergone several modifications through the years in California. In response, Massachusetts has made several changes to their ZEV program in attempts to ensure their program is consistent with California. In fact, the Commonwealth has made changes regarding ZEV requirements since the time it adopted the rule that is currently before EPA. Nevertheless, the Massachusetts revised LEV program is designed to be a comprehensive program which will secure those emission reductions that are necessary for Massachusetts' attainment demonstration for the one-hour ozone NAAQS. For that reason, and since the emission reductions from the California program are controlled by the fleet average hydrocarbon curve and other similar measures, and can be achieved without any specific ZEV sales requirements, we are approving the Massachusetts LEV rules adopted on December 24, 1999 without taking action on or approving the Massachusetts ZEV program at this time. In the case of sections 310 CMR 7.40(2)(a)6, 310 CMR 7.40(2)(c)3, 310 CMR 7.40(10), and 310 CMR 7.40(12), EPA was not requested to take action. For section 310 CMR 7.40(2)(a)5, which establishes ZEV requirements beginning in model year 2003, EPA is not taking any action at this time but intends to do so in the future through the appropriate rulemaking process as the manufacturers' requirements for ZEVs in California, and Massachusetts, become clarified. EPA will conduct full

notice and comment rulemaking on the ZEV portion of the Massachusetts program when those requirements become clarified since those provisions have not been acted on in this rulemaking, or in the October 15, 2002 proposed rulemaking. Other details of EPA's proposed rulemaking were outlined in the **Federal Register** and will not be restated here.

**I. Comments on the Proposed  
Rulemaking**

As stated above, EPA sought public comment on this action and five parties submitted comments. First, two members of the general public submitted comments by which they expressed support for EPA's action to approve the Massachusetts low emission vehicle program as a means to get cleaner air. Next, the Appalachian Mountain Club (AMC), which comprises some 93,000 members, and the Massachusetts Public Interest Research Group (MASSPIRG) provided comments and were supportive of the Massachusetts LEV program. Both organizations also expressed support for Massachusetts intentions to require ZEVs as a way to advance zero emission vehicle technology. AMC explicitly recognized that EPA was not acting on ZEV provisions in this rulemaking. Lastly, the Alliance of Automobile Manufacturers ("the Alliance") expressed some concerns and sought clarification of the action, particularly as it relates to the ZEV requirements of the Massachusetts program.

The Alliance expressed concern that this action appeared to conflict with another EPA proposed action which was published on October 15, 2002 (67 FR 63586) and that included a reference to approving the California LEV II program that might suggest inclusion of the ZEV program. To be clear, as stated in the NPR for this action, EPA is approving the Massachusetts LEV program adopted on December 24, 1999, with the exception of the ZEV program. The emission reductions associated with the Massachusetts LEV program that EPA is approving are assumed in the Massachusetts demonstration of attainment, and are necessary for attainment. These emission reduction estimates are determined by the MOBILE6 model for mobile source emission inventory estimations, which was peer and publicly reviewed, and represents our best estimate of the emission reductions from the program. At this time, for reasons outlined in the notice of proposed rulemaking for this action, EPA is not taking any action on the Massachusetts ZEV program. All portions of the previously federally-

approved Massachusetts LEV I program, including those related to ZEVs, are being replaced by this action.

Although several parties discussed the ZEV program in their comments, EPA was clear that no action was being considered for the ZEV portions of the Massachusetts LEV program at this time. EPA will take action on the ZEV portions of the Massachusetts program in the future when Massachusetts adopts and submits to EPA a ZEV program consistent with the California ZEV program. Any action in the future on the ZEV portion of the Massachusetts program will be through full notice and comment rulemaking.

The Alliance went on to comment that it did not agree with Massachusetts', nor presumably California's, plans to mandate advanced technology vehicles. Again, EPA is not acting on the ZEV portion of the Massachusetts rule, but believes that Massachusetts does have the right under section 177, to adopt all portions of a California program which is adopted in accordance with the provisions of section 209 of the Clean Air Act.

## II. Final Action

EPA is approving a SIP revision at the request of the Massachusetts DEP which was adopted on December 24, 1999. It was submitted to EPA for approval on August 9, 2002. That submittal was later clarified by Massachusetts on August 26, 2002 to exclude certain sections of their ZEV program from consideration. In addition, for the reasons outlined above, at this time we are not taking action on section 310 CMR 7.40(2)(a)5 which includes ZEV requirements beginning in model year 2003. As such, we are approving all of 310 CMR 7.40, the "Low Emission Vehicle Program" except for 310 CMR 7.40(2)(a)5, 310 CMR 7.40(2)(a)6, 310 CMR 7.40(2)(c)3, 310 CMR 7.40(10), and 310 CMR 7.40(12). The regulations adopted by Massachusetts now include the California LEV II motor vehicle emission standards effective in model year 2004, the California LEV I medium-duty standards effective in model year 2003, and the smog index label specification effective model year 2002. This approval will secure all of the emission reductions of the current California LEV standards for light and medium duty vehicles. EPA is approving Massachusetts' low emission vehicle program requirements into the SIP because EPA has found that the requirements are necessary for Massachusetts to achieve the NAAQS for ozone and to reduce emissions of VOC and NO<sub>x</sub> from new vehicles in

accordance with the requirements of the CAA.

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

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 21, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

## List of Subjects in 40 CFR Part 52

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

Dated: November 26, 2002.  
**Robert W. Varney,**  
*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 W—Massachusetts**

2. Section 52.1120 is amended by adding paragraph (c)(132) to read as follows:

**§ 52.1120 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*  
 (132) Revisions to the State Implementation Plan regarding the Low Emission Vehicle Program submitted by the Massachusetts Department of Environmental Protection on August 9 and August 26, 2002.

(i) Incorporation by reference.  
 (A) Letter from the Massachusetts Department of Environmental Protection dated August 9, 2002, in which it submitted the Low Emission Vehicle Program adopted on December 24, 1999.

(B) Letter from the Massachusetts Department of Environmental Protection dated August 26, 2002 which clarified

the August 9, 2002 submittal to exclude certain sections of the Low Emission Vehicle Program from consideration.

(C) December 24, 1999 version of 310 CMR 7.40, the “Low Emission Vehicle Program” except for 310 CMR 7.40(2)(a)5, 310 CMR 7.40(2)(a)6, 310 CMR 7.40(2)(c)3, 310 CMR 7.40(10), and 310 CMR 7.40(12).

3. In section 52.1167, Table 52.1167 is amended by adding new entries to existing state citations for 310 CMR 7.40 to 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 EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
310 CMR 7.40	Low Emission Vehicle Program.	12/24/99	12/23/02	[Insert FR citation from published date].	132	“Low Emission Vehicle Program” (LEV II) except for 310 CMR 7.40(2)(a)5, 310 CMR 7.40(2)(a)6, 310 CMR 7.40(2)(c)3, 310 CMR 7.40(10), and 310 CMR 7.40(12)
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *	* * * * *	* * * * *

**Notes.**

1. This table lists regulations adopted as of 1972. It does not depict regulatory requirements which may have been part of the Federal SIP before this date.
2. The regulations effective statewide unless otherwise in comments or title section.

[FR Doc. 02–32129 Filed 12–20–02; 8:45 am]  
 BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[UT–001–0047; FRL–7422–9]

**Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Utah County PM<sub>10</sub> State Implementation Plan Revisions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing approval of the State of Utah’s revision to the Utah State Implementation Plan (SIP) that was submitted by the Governor on July 3, 2002, revising the SIP for the Utah County nonattainment area for particulates of 10 microns in size or smaller (PM<sub>10</sub>). The Governor’s submittal, among other things, revises the existing attainment demonstration in the approved PM<sub>10</sub> SIP based on a

short-term emissions inventory, establishes 24-hour emission limits for the major stationary sources in the Utah County PM<sub>10</sub> nonattainment area and establishes motor vehicle emission budgets based on EPA’s most recent mobile source emissions model, Mobile6.

On September 10, 2002 EPA published a notice of proposed rulemaking (NPR) (67 FR 57357). EPA’s comment period concluded on October 10, 2002. During this comment period, EPA received ten letters from various local governments within the Utah County area supporting EPA’s approval of this SIP revision and two letters with specific comments regarding the approval of this action. The comments received and EPA’s responses are addressed below.

In this final rule action, EPA approves the Governor’s July 3, 2002 submittal adopting rule R307–110–10 which incorporates revisions to portions of Utah’s SIP Section IX, Part A and rule R307–110–17 which incorporates revisions to portions of Utah’s SIP Section IX, Part H. This action is being

taken under sections 107, 110, and 189 of the Clean Air Act (Act).

**EFFECTIVE DATE:** This final rule is effective January 22, 2003.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466 and copies of the Incorporation by Reference material are available at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 1301 Constitution Avenue, NW Room B108, Mail Code 6102T Washington D.C. 20460. Copies of the State documents relevant to this action are available for public inspection at the Utah Department of Environmental Quality, Division of Air Quality, 150 North 1950 West, Salt Lake City, Utah 84114–4820.

**FOR FURTHER INFORMATION CONTACT:** Libby Faulk, EPA, Region VIII, (303) 312–6083.

**SUPPLEMENTARY INFORMATION:** On September 10, 2002 EPA published a

notice of proposed rulemaking (NPR) for approval of the Utah County PM<sub>10</sub> SIP revision (67 FR 57357). In this final rule action, EPA summarizes all comments and EPA's responses and approves the Governor's July 3, 2002, final SIP revision. Throughout this document, wherever "we", "us", or "our" are used, we mean the Environmental Protection Agency (EPA).

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**I. Background Information**

*A. What Is the Purpose of This action?*

We are approving the Governor of Utah's submittal of July 3, 2002 that requests our approval of the Utah County PM<sub>10</sub> SIP revision that Utah adopted on June 5, 2002 and July 3, 2002 and that became State effective on September 5, 2002. With this SIP revision, Utah has revised Section IX (Section 9 under our current approved version of the Utah SIP), "Control Measures for Area and Point Sources," Part A, "Fine Particulate Matter" and Part H, "Emission Limits" of the SIP. In addition, Utah revised its regulation R307-110-10 (R307-2-10 under our current approved version of the Utah SIP) to incorporate by reference its July 3, 2002 revision of the Utah County portion of the Utah SIP, Section IX, Part A. In addition, Utah revised its regulation R307-110-117 (R307-2-17 under our current approved version of the Utah SIP) to incorporate by reference its June 5, 2002 revision of the Utah County portion of the Utah SIP, Section IX, Part H. We are approving this request and its accompanying regulation revisions because the SIP revision meets the applicable requirements of the Act. For additional information on the Utah County PM<sub>10</sub> SIP revision, please refer to our notice of proposed rulemaking (67 FR 57357).

*B. What Changes to the SIP Is EPA Approving?*

**1. Transportation Conformity Requirements**

This SIP revision establishes motor vehicle emission budgets and includes an analysis of those budgets. Under EPA's regulations at 40 CFR part 93, the Metropolitan Planning Organization (MPO) is required to determine conformity of transportation plans and projects to the motor vehicle emission budgets as approved in the PM<sub>10</sub> SIP. The MPO in Utah County is the Mountainland Association of Governments (MAG).

Utah County has been in a conformity lapse since August 2000 because transportation plans for the area could not meet the PM<sub>10</sub> and NO<sub>x</sub> motor vehicle emission budgets that were derived from the emissions inventory in the approved PM<sub>10</sub> SIP.<sup>1</sup> Utah County could not meet the established motor vehicle emission budgets because the budgets were based on an outdated mobile source emissions model (Mobile4)<sup>2</sup> and the area exceeded its growth projections.

This SIP revision establishes new motor vehicle emission budgets for PM<sub>10</sub> and NO<sub>x</sub> which are based on the latest planning assumptions, including the latest growth projections, and the latest emissions model (Mobile6), released on January 29, 2002 (67 FR 4254). The new motor vehicle emission budgets are established for years 2003, 2010, and 2020 and take into account growth in all other source categories. Please refer to Table 1: Transportation Conformity Motor Vehicle Emission Budgets.

**TABLE 1.—TRANSPORTATION CONFORMITY MOTOR VEHICLE EMISSION BUDGETS**

Year	Primary PM (tons/day)	NO <sub>x</sub> (tons/day)
2003	6.57	20.35
2010	7.74	12.75
2020	10.34	5.12

The values for 2003 reflect the inventory values for motor vehicles that were used in the CMB modeling. The CMB modeling, based on these inventory values, and inventory values for other source categories, demonstrates attainment in 2003. For

<sup>1</sup> EPA approved the PM<sub>10</sub> SIP on July 8, 1994 (59 FR 35036).

<sup>2</sup> Sections 40 CFR 93.110 and 93.111 require areas to use the latest planning assumptions and the latest emissions model for conformity determinations.

2010 and 2020, inventory values for all source categories were projected forward. The 2010 and 2020 motor vehicle emissions budgets reflect the motor vehicle inventory values in 2010 and 2020, except that "road dust" and "brake wear" portions of the 2020 motor vehicle inventory for PM<sub>10</sub> were expanded by 7 percent to take advantage of part of the available safety margin in that year. Per 40 CFR 93.101, the safety margin is the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment or maintenance. The applicable standard for PM<sub>10</sub> is 150 µg/m<sup>3</sup>; even using the expanded 2020 motor vehicle emissions budget for PM<sub>10</sub> reflected in the table above, the CMB projections for 2020 show a maximum concentration of 146.4 µg/m<sup>3</sup>, still below the 150 µg/m<sup>3</sup> standard.

The emissions budgets must be used for conformity determinations per 40 CFR 93.118. Specifically, the 2003 budgets will apply for years 2003 through 2009, the 2010 budgets will apply for years 2010 through 2019, and the 2020 budgets will apply for years 2020 and beyond. In addition, upon the effective date of this final approval of the motor vehicle emission budgets and upon the Federal Highway Administration's approval of a positive conformity determination, the present conformity lapse in Utah County will end.

On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued a decision in *Environmental Defense Fund vs. The Environmental Protection Agency*, No. 97-1637, that we must make an affirmative determination that the submitted motor vehicle emission budgets contained in SIPs are adequate before they are used to determine the conformity of Transportation Improvement Programs or Long Range Transportation Plans. In response to the court decision, we are making most submitted SIP revisions containing a control strategy plan available for public comment and responding to these comments before announcing our adequacy determination. (We do not perform adequacy determinations for SIP revisions that only create new emission budgets for years in which an EPA-approved SIP already establishes a budget, because these new budgets cannot be used for conformity until they are approved by EPA.) We make the motor vehicle emission budgets in SIP revisions available for comment by posting notification of their availability



on our Web site (currently, these notifications are posted at [www.epa.gov/oms/transp/conform/adequacy.htm](http://www.epa.gov/oms/transp/conform/adequacy.htm)). The adequacy process is discussed in greater detail in a May 14, 1999 memorandum from Gay MacGregor entitled "Conformity Guidance on Implementation on March 2, 1999 Conformity Court Decision," also available on our Web site at: [www.epa.gov/oms/transp/traqconf.htm](http://www.epa.gov/oms/transp/traqconf.htm).

Because they extend beyond the time-frame of the previously approved Utah County PM<sub>10</sub> SIP, we reviewed the 2010 and 2020 motor vehicle emission budgets in this plan for adequacy using the criteria located at 40 CFR 93.118(e). The 2003 motor vehicle emission budgets replace the previously approved 2003 budgets in the Utah County PM<sub>10</sub> SIP revision and can't be used for purposes of demonstrating conformity until the effective date approving this Utah County PM<sub>10</sub> SIP revision. The 2010 and 2020 motor vehicle emission budgets were posted to our Web site at: <http://www.epa.gov/oms/transp/conform/adequacy.htm> and were made available for public comment from August 1, 2002 through August 30, 2002. No comments were received. The 2010 and 2020 motor vehicle emission budgets were found to be adequate, effective October 16, 2002. The Utah Department of Transportation and the Federal Highway Administration must use these budgets in future conformity analyses.

2. Updated Emissions Inventory and Attainment Demonstration

The emissions inventory for the Utah County PM<sub>10</sub> nonattainment area covers emissions from all sources of both primary and secondary PM<sub>10</sub> inside Provo and Orem. The SIP revision uses a 1988 and 1989 base year emissions inventory, as well as a 2003 projected emissions inventory for all sources in the inventory domain. The 1988/89 base year inventory was updated for purposes of this SIP revision to create a 24-hour inventory in order to be protective of the 24-hour PM<sub>10</sub> National Ambient Air Quality Standards (NAAQS). The 1994 approved version of the PM<sub>10</sub> SIP includes an emissions inventory based on monthly and annual PM<sub>10</sub> values. The 2003 projected emissions inventory, which also contains 24-hour values, has been updated to reflect stationary source shut-downs and other changes affecting PM<sub>10</sub>, NO<sub>x</sub>, and SO<sub>2</sub> emissions that have occurred since the development of the original PM<sub>10</sub> SIP. The mobile source portion of both the base year and projected inventories were updated to include the use of the new Mobile6 emissions model.

Utah updated the existing attainment demonstration from the original PM<sub>10</sub> SIP to again create an analysis based on 24-hour averages instead of annual values. Utah used the existing chemical mass balance (CMB) methodology for the 24-hour attainment demonstration. The CMB analysis was also updated to account for changes that have occurred since the development of the original PM<sub>10</sub> SIP. One such change to the

attainment demonstration is that Utah increased the wood burning control strategy effectiveness to 90%, meaning that additional reductions in woodburning emissions are calculated into the attainment demonstration. In addition, since the development of the original PM<sub>10</sub> SIP, some sources in the Utah County nonattainment area have banked emissions. Although these emissions are banked, the potential exists for the purchase and use of part or all of such banked emissions. Because of this, Utah has accounted for these banked emissions in the attainment demonstration by assessing the emissions to the source from which they came.

Utah's revised attainment demonstration for Utah County projects attainment for 2002 and 2003 for SIP purposes, and for 2010 and 2020 for conformity purposes only. In this revised SIP, the CMB analysis is based on 1988 and 1989 recorded monitoring data, which is the same data used in the original SIP. Table II below shows the results of the CMB analysis on the projected attainment years using only the highest concentration site for each year. Please refer to the Utah County SIP revision and technical support document (TSD) for more detailed information. Utah used three monitoring sites to demonstrate attainment on numerous high concentration days, although a demonstration of attainment is only required for the design day. In the table below, we only present results from the established design day (this is the same design day as in the original SIP revision).

TABLE II.—UTAH COUNTY PM<sub>10</sub> CMB ANALYSIS RESULTS IN µG/M<sup>3</sup> AT HIGHEST CONCENTRATION MONITOR

Sources	2002 (Lindon)	2003 (Lindon)	2010 (North Provo)	2020 (North Provo)
Geneva Steel .....	51.5	51.5	38.7	38.7
Point Sources* .....	23.5	23.5	18.5	18.5
Mobile Sources .....	46.5	45.8	56.1	55.4
Area Sources .....	17.4	17.7	16.8	19.1
Total Concentration .....	138.9	138.4	130.0	131.7

\* All point sources in Provo and Orem, excluding Geneva Steel. Includes secondary sulfates and nitrates.

In the original SIP as well as in this SIP revision, Utah uses three monitoring sites to demonstrate attainment: Lindon, North Provo and West Orem. The West Orem monitoring site has been shut down since December 31, 1997.

3. Establishment of Enforceable Short-Term Emission Limits for Major Stationary Sources

The original Utah County PM<sub>10</sub> SIP includes the entire permit (circa 1988—

1991) for most of the stationary sources in Provo and Orem. We only require that the major stationary sources of PM<sub>10</sub> and its precursors have specific limits in SIPs. For these majors sources, it is important to include their appropriate emission limits and the enforceable provisions for those limits, but it's usually not essential to include their entire permit. Because Utah County is designated nonattainment for the 24-hour PM<sub>10</sub> NAAQS, the SIP

limits must include short-term limits with an averaging time of 24 hours or less. To determine which sources should be treated as major sources for purposes of the PM<sub>10</sub> SIP, threshold limits were chosen of 100 tons per year of primary PM<sub>10</sub> emissions, 200 tons per year of NO<sub>x</sub> emissions, and 250 tons per year of SO<sub>2</sub> emissions. UDAQ's and EPA's analysis of the sources in Provo and Orem showed that sources above these levels account for a high

percentage of stationary source emissions in the area. The five sources with explicit emission limits in the Utah County PM<sub>10</sub> SIP revision are, Geneva Steel, Geneva Nitrogen, Inc., Provo City Power, Springville City Corporation and Geneva Rock Product's Asphalt Plant Baghouse Stack. Table III below shows the emission limits established through this SIP revision for the major sources, except Geneva Steel.

TABLE III.—EMISSION LIMITS FOR STATIONARY SOURCES IN TONS/DAY

Sources	Primary PM <sub>10</sub>	NO <sub>x</sub>	SO <sub>2</sub>
Geneva Nitrogen, Inc.—Montecantini Acid Plant Vent .....	.....	0.389	.....
Geneva Nitrogen, Inc.—Weatherly Acid Plant Vent .....	.....	0.233	.....
Geneva Nitrogen, Inc.—Prill Tower .....	0.24	.....	.....
Geneva Rock Products Asphalt Plant Baghouse Stack .....	0.103	0.568	0.484
Provo City Power .....	.....	2.45	.....
Springville City Corporation .....	.....	1.68	.....

Table IV below provides the 24-hour emission limits for the major emitting units at Geneva Steel for September through May, and Table V below provides the 24-hour emission limits for the major emitting units at Geneva Steel for June through August. Table VI below provides the annual emission limits for Geneva Steel's major emitting units.

TABLE IV.—EMISSION LIMITS FOR GENEVA STEEL IN TONS/DAY (SEPTEMBER–MAY)

Geneva steel source	Primary PM <sub>10</sub>	NO <sub>x</sub>	SO <sub>2</sub>
Coke Plant* .....	0.1	.....	0.0
Sinter Plant** .....	.....	.....	.....
Blast Furnace .....	1.3	.....	.....
Q–BOP .....	0.5	.....	.....
Geneva Other*** .....	1.2	.....	.....
Secondary Sulfate .....	.....	.....	1.0
Secondary Nitrate .....	.....	7.7	.....

\* All NO<sub>x</sub> emissions from coke plant ovens have been banked. Emissions of NO<sub>x</sub> associated with continuing operations in the vicinity of the coke plant (coke pile handling) are accounted for in the secondary nitrate limit.

\*\* All emissions of PM<sub>10</sub>, SO<sub>2</sub>, and NO<sub>x</sub> from the sinter plant have been banked.

\*\*\* The "Geneva Other" category includes the power house, rolling mill and fugitive emissions.

TABLE V.—EMISSION LIMITS FOR GENEVA STEEL IN TONS/DAY (JUNE–AUGUST)

Geneva steel source	Primary PM <sub>10</sub>	NO <sub>x</sub>	SO <sub>2</sub>
Coke Plant* .....	0.1	.....	0.0
Sinter Plant** .....	.....	.....	.....
Blast Furnace .....	1.3	.....	.....
Q–BOP .....	0.5	.....	.....
Geneva Other .....	1.4	.....	.....
Secondary Sulfate .....	.....	.....	3.4
Secondary Nitrate .....	.....	9.6	.....

\* All NO<sub>x</sub> emissions from coke plant ovens have been banked. Emissions of NO<sub>x</sub> associated with continuing operations in the vicinity of the coke plant (coke pile handling) are accounted for in the secondary nitrate limit.

\*\* All emissions of PM<sub>10</sub>, SO<sub>2</sub>, and NO<sub>x</sub> from the sinter plant have been banked.

TABLE VI.—ANNUAL EMISSION LIMITS FOR GENEVA STEEL IN TONS/YEAR

Geneva steel source	Primary PM <sub>10</sub>	NO <sub>x</sub>	SO <sub>2</sub>
Coke Plant* .....	29.6	.....	0.0
Sinter Plant** .....	.....	.....	.....
Blast Furnace .....	454.4	.....	.....
Q–BOP .....	178.2	.....	.....
Geneva Other .....	448.1	.....	.....
Secondary Sulfate .....	.....	.....	560.2
Secondary Nitrate .....	.....	2971.8	.....

\* All NO<sub>x</sub> emissions from coke plant ovens have been banked. Emissions of NO<sub>x</sub> associated with continuing operations in the vicinity of the coke plant (coke pile handling) are accounted for in the secondary nitrate limit.

\*\* All emissions of PM<sub>10</sub>, SO<sub>2</sub>, and NO<sub>x</sub> from the sinter plant have been banked.

It is important to note here that Geneva Steel is in the process of banking or has banked a significant amount of its emissions from the coke plant, sinter plant, Q—and sources in the "Geneva Other" category. This is due to the shutting down or reduction in emissions for the coke plant (some fugitive emissions remain from the coke piles), sinter plant, foundry and rolling mill scarfer facility. Emissions reductions are also due to fuel

switching. Table VII below shows the banked emissions per process in tons per year of PM<sub>10</sub>, NO<sub>x</sub>, and SO<sub>2</sub>. Where

Tables IV, V and VI reflect that all process emissions have been banked, no

emissions from such process will occur under the SIP revision.

TABLE VII.—BANKED EMISSIONS FOR GENEVA STEEL IN TONS/YEAR

Geneva steel source	Primary PM <sub>10</sub>	NO <sub>x</sub>	SO <sub>2</sub>
Coke Plant .....	461.8	557.2	454.9
Sinter Plant .....	101.0	705.2	434.2
Q-BOP .....	27.2		
Geneva Other .....	51.0		
Total .....	641	1262.4	889.1

#### 4. Director's Discretion Provisions

The original EPA-approved PM<sub>10</sub> SIPs for Utah County and Salt Lake County contain provisions that some would argue allow the Executive Secretary of the State of Utah to make changes effective to the SIP without first obtaining EPA approval. We believe these "director's discretion" provisions are contrary to the CAA and should not have been approved into the SIP. At the very least, these provisions have led to uncertainty regarding the content of the federally enforceable SIP. In order to address these concerns, Utah has inserted the following language into the SIP: "Notwithstanding any other provision in the Utah SIP, no change to this SIP revision shall be effective to change the federal enforceability of the emission limits or other requirements of the Utah County PM<sub>10</sub> SIP without EPA approval of such change as a SIP revision." This language makes clear that Utah may not unilaterally change the limits and requirements of the federally enforceable SIP, and that Utah's changes to elements of the SIP will not be federally effective without EPA's approval. As explained further below, Utah has also committed to work with us in order to permanently resolve the director's discretion issues in the Salt Lake County and Utah County PM<sub>10</sub> SIPs.

#### C. What Is the State's Process To Submit These Materials to EPA?

Section 110(k) of the CAA addresses our actions on submissions of revisions to a SIP. The CAA requires States to observe certain procedural requirements in developing SIP revisions for submittal to us. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This public process must occur prior to the State submitting its final revision to us.

At the March 13, 2002 Utah Air Quality Board (UAQB) meeting, the UAQB proposed for public comment revisions to R307-110-10, SIP Section

IX.A, R307-110-17, and SIP Section IX.H.1. The UAQB proposed the SIP revision for a 30-day State public comment period that began on April 1, 2002. However, due to problems with copies of the amendment to the Utah County PM<sub>10</sub> Plan, the State made revised copies available beginning April 4, 2002 and extended the public comment period to May 4, 2002. The State conducted public hearings on April 23 and 24, 2002. Final action and approval was taken by the UAQB on June 5, 2002 and July 3, 2002 and rule R307-110-10 incorporating revised Section IX.A, and rule R307-110-17 incorporating revised Section IX.H.1, into Utah's SIP became State effective on September 5, 2002.

On July 3, 2002, the Governor submitted final rule R307-110-10, SIP Section IX.A, R307-110-17, and SIP Section IX.H.1 to us for approval into the Utah SIP. In a letter dated August 15, 2002, from Robert E. Roberts, EPA Region Administrator for Region VIII, to Governor Leavitt of Utah, we determined that the Governor's July 3, 2002, SIP submittal met the completeness criteria in 40 CFR part 51, Appendix V, and therefore the submittal was considered administratively and technically complete.

#### II. UDAQ's Commitment for Future SIP Revisions

With an April 18, 2002 letter from Richard Sprott, Director of Utah's Division of Air Quality to Richard Long, Director of the Air and Radiation Program in EPA Region 8, UDAQ committed to work with us to address remaining issues with the PM<sub>10</sub> SIPs for both the Utah and Salt Lake County nonattainment areas and with the Utah SIP generally. Utah will address these ongoing issues in a SIP revision (which may be in the form of a maintenance plan) that will be submitted by March 1, 2004. Utah has committed to address the following issues with the existing SIP:

- (1) State authority as it relates to the discretion granted to the Executive Secretary of the Utah Air Quality Board (EPA uses the term "director's discretion" for these provisions);
- (2) Variance provisions as provided in Utah law, Air Quality regulations and the SIP;
- (3) UAM-AERO based modeling and analysis to address pollutants of concern in the SIP or maintenance plan;
- (4) Stationary source modeling for major sources and appropriate non-major sources to determine predicted impacts of emission limits established in the SIP or maintenance plan;
- (5) Enforceable emission limits for sources in the SIP or maintenance plan, including enforceable 24-hour emission limits for major sources in both Salt Lake and Utah Counties and emission limits (or surrogates for emission limits) for refinery process flaring and SRU maintenance downtime;
- (6) Emissions inventory and modeling analysis for the nonattainment areas in Salt Lake and Utah Counties;
- (7) New source review, emissions banking, and interpollutant trading (EPA's issues with these programs were explained in a May 10, 2001 letter from Region 8 to UDAQ);
- (8) Unavoidable breakdown rules and consistency with the EPA September 20, 1999 policy regarding such breakdowns;
- (9) Inclusion of annual growth rates in the SIP or maintenance plans;
- (10) Justification for credits and growth rates for wood and coal burning in Utah County;
- (11) Backhalf emissions measuring for PM<sub>10</sub> emissions limit stack testing;
- (12) General language clean up in the PM<sub>10</sub> SIP to assure SIP is consistent and reads appropriately;
- (13) Diesel I/M revision or program withdrawal;
- (14) Emission budgets for PM<sub>10</sub> and NO<sub>x</sub> in Salt Lake portion of PM<sub>10</sub> SIP;
- (15) Emission inventory and modeling analysis for automobile emission inspection and maintenance program changes, if any such changes are made in the SIP or maintenance plan.

The above issues aren't addressed in this SIP revision for Utah County and therefore, these issues will continue after our final approval of this SIP revision.

### III. Summary of Public Comments and EPA's Responses

A number of the comments we received are more properly directed to the State of Utah. For instance, several comments complained that the State adopted additional controls for stationary sources in this SIP revision. Others complained that the State should've changed parts of the existing SIP that we have previously approved. We note that EPA's role in reviewing and acting on SIP revisions is limited. We take SIP revisions as they are submitted to us by a state. We must approve a SIP revision if it meets the applicable requirements of the Clean Air Act; we must disapprove it if it does not meet these requirements. We may not change the provisions that a state has adopted. As we describe in greater detail below, we do not view the negative comments we received as a basis to disapprove the SIP revision. We believe the SIP revision meets the applicable requirements of the CAA, and we are approving it.

(1) *Comment:* One commenter suggests that the correct way to address a conformity problem is through mobile source control measures rather than revision to the entire SIP. Another commenter states that throughout the SIP revision process, not enough effort was made to control mobile source emissions which are the real source of the conformity problem.

*Response:* The commenters' policy concerns are more properly directed to the State. The State has exercised its discretion in adopting changes to the SIP and allocating any burden of those changes among various source categories. Our role is limited; we must either approve or disapprove the changes the State has submitted depending on whether those changes meet the applicable requirements of the Clean Air Act. We are not authorized to disapprove the SIP based on the State's decision to allocate some or all of the control burden to stationary sources. We have evaluated the State's SIP revision; because it meets applicable requirements of the CAA, including the requirement to demonstrate attainment, we are approving it.

(2) *Comment:* One commenter states that EPA encouraged a revision to the entire SIP rather than focus on mobile source emissions because EPA suggested it would not approve the conformity demonstration/SIP revision

without satisfactory changes to stationary source portions of the SIP. The commenter suggests we took this "indirect approach" because the CAA clearly does not authorize the agency to make a SIP call under the circumstances.

*Response:* This commenter's concerns do not present a basis for us to disapprove the SIP revision. Please see our response to the previous comment. As a point of clarification, we note that the State chose to revise the SIP to address the conformity lapse in Utah County. While the State was developing the SIP revision, we identified a number of concerns with the existing Utah County PM<sub>10</sub> SIP, some of which related to stationary source provisions. Consistent with our obligations under the Clean Air Act, we advised the State of changes we thought necessary to ensure that the SIP revision would meet applicable Clean Air Act requirements. Whether we had authority to issue a SIP call is not a question that is before us today. We'd also like to clarify that EPA does not approve conformity demonstrations; instead, the Department of Transportation has the authority for such decisions.

(3) *Comment:* One commenter, despite reservations, asks that EPA approve the SIP revision as soon as possible.

*Response:* We acknowledge the supportive comment. We disagree with the commenter's suggestion that the revision is not legally or technically justified; even if the commenter is correct that the SIP revision is more stringent than minimally necessary to meet the Clean Air Act's requirements, this would not form a basis for us to disapprove the SIP. If a SIP revision meets the minimum requirements of the Clean Air Act, we are bound to approve it, even if it exceeds the minimum requirements. See *Union Electric Co. v. Environmental Protection Agency*, 427 U.S. 246, 263-264 (1976).

(4) *Comment:* One commenter believes the Utah Division of Air Quality (DAQ) and Mountainland Association of Governments (MAG) have demonstrated conformity with the PM<sub>10</sub> SIP and that EPA should approve the SIP revision as soon as possible so as not to stand in the way of Utah County receiving its federal highway funds.

*Response:* We are approving the SIP, including the new budgets. Upon the effective date of this action, the new budgets will apply for purposes of determining conformity. It will then be up to the metropolitan planning organization (MAG) and the Department

of Transportation to determine conformity with the new budgets.

(5) *Comment:* One commenter believes that when the problem being addressed is growing mobile source emissions, it is bad policy to do anything other than address mobile source emissions exclusively. According to the commenter, EPA and DAQ should not use a conformity lapse situation as justification for demanding changes to the stationary source portion of the SIP. This sets a bad precedent.

*Response:* The commenter's policy concerns are more properly directed to the State. The State has considerable latitude to determine the best way to address a conformity lapse. In revising the SIP to remedy such a lapse, the State has discretion to choose which sources to regulate and to what degree, so long as the SIP demonstrates attainment and meets other requirements of the CAA. Put another way, it is not our place to dictate where the State should find emissions reductions if emissions reductions are needed. Instead, our concern is that any SIP revision submitted by the State meet the requirements of the CAA and our regulations; to the extent we offered input to the State during the State's development of the Utah County PM<sub>10</sub> SIP revision, our input was intended to help the State adopt a SIP that would meet these criteria. Also, our conformity regulation at 40 CFR 93.118(e)(4)(iv) indicates that emissions from all source categories must be considered when we determine whether motor vehicle budgets are consistent with attainment of the NAAQS. In determining adequacy or approvability of motor vehicle emissions budgets we cannot look at mobile sources in isolation.

(6) *Comment:* One commenter asserts that the Utah PM<sub>10</sub> SIP should be further revised during the maintenance plan process to allow for plant modifications without requiring SIP revisions. The commenter expresses his opinions regarding the way in which the permit and SIP process should interact to allow source flexibility.

*Response:* The issues raised by the commenter are not relevant to the submission made by the State and thus do not affect our approval of it.

(7) *Comment:* One commenter suggests that any commitments or comments contained in an April 18, 2002 letter from DAQ to EPA regarding future SIP revisions are independent from this SIP revision and should not affect its approval.

*Response:* While we noted the April 18, 2002 letter in our notice of proposed rulemaking, we proposed to approve the Utah County SIP revision. We are

approving the SIP revision with this rulemaking and the budgets contained in the SIP revision must be used for conformity determinations once our rulemaking is effective. We will address the commitments contained in the April 18, 2002, letter in future rulemaking.

(8) *Comment:* We received numerous comments asking that we approve the SIP revision.

*Response:* We acknowledge the supportive comments.

(9) *Comment:* One commenter submitted a copy of the comments it submitted to the State during its hearing process. The commenter indicates that the comments raise some "fundamental policy issues concerning the approach taken both by EPA and DAQ with regard to proposed SIP revisions," and asks that EPA consider the comments during its deliberations on the Utah County PM<sub>10</sub> SIP revisions.

*Response:* The commenter has not specified whether it is seeking EPA disapproval of the Utah County SIP revisions. However, for purposes of responding, we will assume that the commenter believes the SIP revisions should be disapproved. The following are summaries of comments submitted by this commenter and our responses.

(10) *Comment:* The commenter complains that State changes to the proposed SIP revision were made without ample opportunity for comment by affected businesses. The commenter asks that all future changes allow stationary sources to provide input to the decision making process.

*Response:* The commenter does not specify the changes that the State made to the proposed SIP revision; thus, we lack sufficient information to evaluate the commenter's complaint. We are not aware of changes the State made to the proposed SIP revision that would require a restart of the public participation process. Information submitted by the State indicates that the State conducted public hearings on the SIP revisions on April 23 and 24, 2002 and provided published notice of the hearings on March 23 and April 9, 2002. The State also provided a 30-day period for public comment and met with various stakeholders, including industrial sources, during the development of the SIP revisions. Section 110(a)(2) of the CAA requires states to adopt SIPs after reasonable notice and public hearing. We believe the State met these requirements.

(11) *Comment:* The commenter seems to be asserting that we are holding or have held approval of the Utah County SIP revisions hostage until the State addresses our concerns. The commenter cites a case titled *Snowbird Corporation*

*v. U.S. Department of Agriculture* for the proposition that such behavior is illegal.

*Response:* We provided input to the State while the State developed revisions to the Utah County SIP revision and identified issues we felt the State would need to address in order for us to approve a revision to the SIP. The issues we raised were based on our interpretation of requirements of the Clean Air Act, and we believe our actions were completely within our authority under the Clean Air Act. If the State disagreed with our interpretations, it was free to disregard our input, submit a SIP revision, and exercise its legal rights under the Clean Air Act in the event we disapproved the submitted revision. There is no entitlement to approval of a SIP revision under the Clean Air Act unless the revision meets the requirements of the CAA and EPA regulations. Since receiving the SIP submittal from the State, we have acted expeditiously to propose it for approval and approve it. We have not held the SIP revision "hostage."

(12) *Comment:* The commenter indicates that increases in mobile source emissions should not be used to justify reductions in allowable emission limits currently applicable to stationary sources. The commenter wants reasonably stringent budgets for mobile sources and wants mobile sources to stay within budget. The commenter wants any reductions in the inventory from use of MOBILE 6 modeling to be allocated to stationary sources.

*Response:* These decisions are within the State's discretion in the first instance, and EPA may not consider these comments in determining whether the SIP revision meets the requirements of the CAA. See our response to previous comments. Also, see *Union Electric Co. v. Environmental Protection Agency*, 427 U.S. 246, 266 (1976), in which the Supreme Court held that a state "may select whatever mix of control devices it desires" as long as the NAAQS are met.

(13) *Comment:* The commenter argues that the SIP revision contains emissions caps that will preclude plant production increases and growth. The commenter was concerned that these emissions caps may only be changed through an EPA-approved SIP revision. According to the commenter, such an approach is unrealistic and unworkable because the revision and approval process can take as long as 5 to 10 years. The commenter expressed concern that this will result in functionally prohibiting industrial and business expansion. The commenter suggests a countywide cap

be implemented that allows emissions trading under the cap.

*Response:* The commenter's concerns are more properly directed to the State because they raise issues with the State's chosen approach, not matters that are within the scope of EPA's approval or disapproval of this action. EPA's decision to approve the revision is limited to whether it complies with the applicable requirements of the CAA. We believe that the emissions limits meet the requirements of the Clean Air Act because they are practically enforceable and will ensure attainment of the NAAQS. The fact that the limits may only be changed through a SIP revision is not a basis for us to disapprove the SIP revision. In addition, we believe the commenter's assumptions are unfounded in certain respects. First, it is our understanding that many of the allowable limits in the SIP allow for considerable growth in emissions. (Whether such increases would trigger new source review requirements is a separate question.) Second, we have a responsibility under the Clean Air Act to ensure that emissions limits that form the basis for an attainment demonstration are enforceable and permanent. Permanent in this instance means that they may not be changed without EPA's approval through a SIP revision. See section 110(i) of the Act and 40 CFR 51.105. Third, this approach has proven workable throughout Region 8. Industrial and business expansion has continued, despite firm emissions limits in SIPs.

(14) *Comment:* The commenter is concerned that language in the Utah SIP that relates to New Source Review negates one of the stated goals of the SIP revision—to remove smaller sources from the SIP and thus allow those smaller sources to change their Approval Orders without EPA review. The commenter mentions language stating that diffusion modeling will be performed to predict the source's effect on air quality in the area, and requiring issuance of an Approval Order. The commenter is concerned that this language could be interpreted to require EPA approval of changes to Approval Orders as SIP revisions.

*Response:* The commenter's concerns are more properly directed to the State, rather than to EPA. The State did not adopt the changes the commenter requested and has not submitted changes to Section 2 of the Utah SIP. The absence of such changes does not render the Utah County PM<sub>10</sub> SIP revision inadequate, and we are approving the SIP revision as submitted. However, we believe the commenter's

fears are unfounded. Requirements for New Source Review are intended to complement the SIP; see our response to comment 18, below. But, there is no requirement in the State's regulations or in our regulations that the State seek or gain prior EPA approval of changes to Approval Orders. This does not mean a state is free to ignore state or federal regulatory requirements in implementing its New Source Review requirements; if a state fails to implement those requirements, we may take a variety of actions under the Clean Air Act to correct the state's failure.

(15) *Comment:* The commenter questions the addition of Geneva Rock asphalt plant to the SIP "when it is not in the same category as the large stationary sources." The commenter also wonders why Geneva Rock has no annual emission limitations like other sources in the SIP.

*Response:* We asked the State to include Geneva Rock in the SIP because Geneva Rock's allowables (*i.e.*, permitted levels) for PM<sub>10</sub> exceed 100 tons per year. This is the threshold for PM<sub>10</sub> that the State and EPA settled on to define which sources to include in the SIP. We note that the inclusion in the SIP of emission limits for Geneva Rock is not a basis for us to disapprove the SIP revision. We don't know why the State did not include annual emission limits in the SIP for Geneva Rock. However, given Geneva Rock's size and the daily limits that apply November through February, we don't believe the lack of annual emission limits for this one source threatens the annual PM<sub>10</sub> NAAQS.

(16) *Comment:* The commenter suggests that other states, such as California and Texas, allow changes in equipment and/or facility modifications that do not require a SIP revision and asks the State to evaluate these approaches.

*Response:* The commenter directed this comment to the State, but the State did not elect to adopt the suggested approach. Because the State has not submitted such mechanisms as part of this SIP revision, the comment is not relevant to our approval. The absence of such mechanisms does not form a basis for us to disapprove the SIP revision.

(17) *Comment:* The commenter says that the provision in the SIP that requires offsets for emissions increases greater than 25 tons has never been adequately justified or considered and that it should be removed from the SIP.

*Response:* The commenter directed this comment to the State, but the State did not elect to modify this provision of the SIP. The continued presence of this offset provision in the SIP does not

render the submitted SIP revision inadequate or form a basis for us to disapprove the SIP revision.

(18) *Comment:* The commenter indicates that for many companies regulated under the pre-existing Utah County PM<sub>10</sub> SIP, details such as hours of operation and specific emission limitations have been added to their Approval Orders solely for the purpose of having the Approval Orders be consistent with the SIP. Now that the revised SIP no longer contains such limitations for many sources, the commenter argues that the Approval Orders for those sources should be revised to eliminate such limitations as well.

*Response:* This comment does not pertain to the validity of the SIP revision itself. However, we do not believe it would be appropriate for the State to engage in wholesale changes to existing Approval Orders. The idea behind taking specific emissions limitations out of the SIP for some sources was to provide the type of flexibility the commenter is seeking—namely to make source changes without the need for a SIP revision. However, removal of these specific SIP provisions does not mean that such sources would be exempt from emissions limitations entirely, or that changes to their Approval Orders would be made without complying with the permitting requirements in the Utah SIP. Those permitting requirements, which EPA has approved and which are intended to meet the requirements of 40 CFR 51.160 through 51.166, are designed to ensure that permit changes are carefully evaluated for possible impacts on the relevant SIPs and on attainment and maintenance of the NAAQS. Neither the State nor sources can assume that removal of emissions limitations and other requirements from the Utah County SIP justifies their removal from Approval Orders.

(19) *Comment:* The commenter suggests that EPA Method 5 should be added as an alternative to Method 201a for compliance testing, at a source's option. According to the commenter, the Executive Secretary should have the discretion to change other details specified in Section 1.a.A without having to go through a full SIP revision, because this is a relatively minor aspect of the SIP.

*Response:* The commenter's concern is directed at the State. We note that the SIP permits the use of EPA Method 5 under certain circumstances, depending on the characteristics of the gas stream in the stack. Beyond that, it is not within our authority to change the SIP that has been submitted to us. The lack

of source or Executive Secretary discretion to change the test method is not a basis for disapproval of the submitted SIP. The inclusion of the discretion requested by the commenter *would* be a basis for disapproval. We note that the State has committed to address some issues we have with compliance testing in a future SIP revision, but these issues do not relate to the commenter's comment.

(20) *Comment:* The commenter wonders whether incorporating the definitions of R307–101–2 into section 1.a.E of the SIP will limit DAQ's ability to modify its definitions without EPA approval of a SIP revision.

*Response:* The requirement for EPA approval of changes to an element of the SIP is not a flaw in the submitted SIP, and we are approving the SIP as submitted. Our approval means that State changes to the SIP revision, including incorporated definitions, will not be federally effective until we approve them. This is because the Clean Air Act and our regulations provide that no changes to an applicable implementation plan are effective unless and until they are approved by us as a SIP revision. See section 110(i) of the CAA and 40 CFR 51.105.

(21) *Comment:* The commenter indicates that the opacity measurement requirement of section 1.a.G of the SIP is more stringent than the federal Method 9 and that Method 9 opacity observations without modification should be used instead.

*Response:* This comment was addressed to the State. The State did not adopt the change the commenter suggested. The State's adoption of a standard that is more stringent than applicable federal requirements is not a basis for disapproval.

(22) *Comment:* The commenter states that section 1.a.H of the SIP should state that facilities with a required site-specific fugitive dust control plan are exempted from the requirements of this section.

*Response:* The State did not adopt the change the commenter suggested. We believe the provision is adequate as written and are approving this provision of the SIP.

#### IV. EPA's Final Action

In this action EPA is finalizing approval of the State of Utah's revision to the Utah State Implementation Plan (SIP) that was submitted by the Governor on July 3, 2002, revising the SIP for the Utah County nonattainment area for particulates of 10 microns in size or smaller (PM<sub>10</sub>). The Governor's submittal contains rule R307–110–10 which incorporates revisions to portions

of Utah's SIP Section IX, Part A and rule R307-110-17 which incorporates revisions to portions of Utah's SIP Section IX, Part H. The Governor's submittal, among other things, revises the existing attainment demonstration in the approved PM<sub>10</sub> SIP based on a short-term emissions inventory, establishes 24-hour emission limits for the major stationary sources in the Utah County PM<sub>10</sub> nonattainment area and establishes motor vehicle emission budgets based on EPA's most recent mobile source emissions model, Mobile6.

We note that Section IX, Part H of the SIP revision indicates that definitions contained in rule R307-101-2 apply to Section IX, Part H. Rule R307-101-2 is a recodification of rule R307-1-1. We have approved R307-1-1 into the SIP but not R307-101-2. For purposes of this action only, we have reviewed R307-101-2. We find that the definitions in R307-101-2 are generally the same as those contained in R307-1-1 and that they are acceptable as they apply to Section IX, Part H of the SIP revision. Therefore, we are listing under the additional materials section of this rulemaking (section C(54)(ii)(E) below) rule R307-101-2 as in effect at the time Utah adopted the revisions to Section IX, Part H of the SIP and are placing a copy of the rule in the docket for this action. We will evaluate rule R307-101-2 as it applies to the Utah SIP generally in a future rulemaking action.

This final action will become effective on January 22, 2003.

## V. Administrative Requirements

### (a) Executive Order 12866

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

### (b) Executive Order 13045

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

This rule is not subject to Executive Order 13045 because it is not economically significant and EPA does not have the discretion to engage in a risk assessment or alternatives analysis in acting on SIP revisions.

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

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves state rules 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.

### (d) Executive Order 13175 (*Consultation and Coordination with Indian Tribal Governments*)

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to

ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

### (e) Executive Order 13211 (*Energy Effects*)

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

### (f) 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 final approval 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 SIP final approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2). Therefore, because the final rule does not create any new requirements, I certify that the final rule will not have a significant economic impact on a substantial number of small entities.

*(g) Unfunded Mandates*

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

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

*(h) Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective January 22, 2003.

*(i) National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA,

EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

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.

*(j) Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 21, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Clean Air Act.)

**List of Subjects in 40 CFR Part 52**

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

Dated: December 12, 2002.

**Robert E. Roberts,**

*Regional Administrator.*

Title 40, chapter I, part 52 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 TT—UTAH**

2. Section 52.2320 is amended by adding paragraph (c)(54) to read as follows:

**§ 52.2320 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(54) On July 3, 2002, the Governor of Utah submitted a SIP revision revising the SIP for the Utah County nonattainment area for particulates of 10 microns in size or smaller (PM<sub>10</sub>). The Governor's submittal, among other things, revises the existing attainment demonstration in the approved PM<sub>10</sub> SIP based on a short-term emissions inventory, establishes 24-hour emission limits for the major stationary sources in the Utah County PM<sub>10</sub> nonattainment area and establishes motor vehicle emission budgets based on EPA's most recent mobile source emissions model, Mobile6.

(i) Incorporation by reference.

(A) Rule R307-110-10, which incorporates revisions to portions of the Utah State Implementation Plan, Section IX, "Control Measures for Area and Point Sources," Part A, "Fine Particulate Matter" as adopted on July 3, 2002, by the Utah Air Quality Board, and State effective on September 5, 2002. (Section IX of the Utah SIP was formerly designated Section 9. The revisions to Section IX, Part A we are incorporating by reference with this action do not replace Section 9, Part A entirely, but revise portions of Section 9.A.3., 9.A.6, 9.A.7, 9.A.8, 9.A.9 of the previously approved Utah SIP and add a new Section IX.A.10.)

(B) Rule R307-110-17, which incorporates revisions to portions of the Utah State Implementation Plan, Section IX, "Control Measures for Area and Point Sources," Part H, "Emission Limits," as adopted on June 5, 2002, by the Utah Air Quality, and State effective on September 5, 2002. (Section IX, Part H of the Utah SIP was formerly designated Section 9, Appendix A. The revisions to Section IX, Part H we are incorporating by reference with this action replace the following sections of Section 9, Appendix A of the previously approved Utah SIP: Section 1.1 (General Requirements (Utah County)) and all subsections thereof; Section 1.2 (Particulate Emission Limitations (company specific)) and all subsections thereof.)

(ii) Additional material.

(A) Letter dated August 9, 2002 from Richard Sprott, Director, Utah Division of Air Quality, to Richard Long, Director, Air and Radiation Program, EPA Region 8, transmitting the



chronology of how the Utah County PM<sub>10</sub> SIP revision was adopted over two Utah Air Quality Board meetings (June 5, 2002 and July 3, 2002) and the justification for the nonsubstantive revisions made between the two adoption dates.

(B) Letter dated July 3, 2002 from Governor Michael O. Leavitt, State of Utah, to Robert E. Roberts, Regional Administrator, EPA Region 8, requesting EPA's approval of the Utah State Implementation Plan for PM<sub>10</sub> in Utah County.

(C) Commitment letter dated April 18, 2002 from Richard Sprott, Director, Utah Division of Air Quality, to Richard Long, Director, Air and Radiation Program, EPA Region 8, committing to work with us to address remaining issues with the PM<sub>10</sub> SIPs for both the Utah and Salt Lake County nonattainment areas and with the Utah SIP in general. Utah will address these ongoing issues in a SIP revision (which may be in the form of a maintenance plan) that will be submitted by March 1, 2004.

(D) Letter dated March 15, 2002 from, Richard Sprott, Director, Utah Division of Air Quality, to Richard Long, Director, Air and Radiation Program, EPA Region 8, accompanied by three volumes of Technical Support Documentation titled "Supplement II-02 to the Technical Support Documentation for the State Implementation Plan for PM<sub>10</sub>" for the Utah County PM<sub>10</sub> SIP revision.

(E) Utah's General Definition rule R307-101-2 as in effect at the time Utah adopted Section IX, Part H of the SIP revision on June 5, 2002.

(F) All portions of the July 3, 2002 Utah PM<sub>10</sub> SIP revision submittal, other than any documents or provisions mentioned in paragraph (c)(54)(i) of this section.

[FR Doc. 02-32259 Filed 12-20-02; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 02-3429, MB Docket No. 02-273, RM-10562]

#### Digital Television Broadcast Service; Tuscaloosa, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of TV Alabama, Inc., substitutes

DTV channel 5 for DTV channel 34c at Tuscaloosa, Alabama. See 67 FR 59490, September 23, 2002. DTV channel 5 can be allotted to Tuscaloosa in compliance with the principle community coverage requirements of section 73.625(a) at reference coordinates 33-28-48 N. and 87-25-50 W. with a power of 5.4, HAAT of 641 meters and with a DTV service population of 1431 thousand. With this action, this proceeding is terminated.

DATES: Effective February 3, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02-273, adopted December 12, 2002, and released December 19, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

#### List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

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

#### PART 73—[AMENDED]

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

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

#### § 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Alabama, is amended by removing DTV channel 34c and adding DTV channel 5 at Tuscaloosa.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02-32282 Filed 12-20-02; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 02-3430, MB Docket No. 02-271, RM-10441]

#### Digital Television Broadcast Service; Belton, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Central Texas College, substitutes DTV channel 38 for DTV channel 47c at Belton, Texas. See 67 FR 59490, September 23, 2002. DTV channel 38 can be allotted to Belton, Texas, in compliance with the principle community coverage requirements of section 73.625(a) at reference coordinates 30-59-08 N. and 97-37-51 W. with a power of 200, HAAT of 392.9 meters and with a DTV service population of 735 thousand. With this action, this proceeding is terminated.

DATES: Effective February 3, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02-271, adopted December 12, 2002, and released December 19, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

#### List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

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

#### PART 73—[AMENDED]

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

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

#### § 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Texas, is amended by removing DTV

channel 47c and adding DTV channel 38 at Belton.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Division, Media Bureau.*

[FR Doc. 02-32283 Filed 12-20-02; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 02-3431, MB Docket No. 02-280, RM-10558]

#### Television Broadcast Service; Blanco, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Univision Television Group, substitutes channel 17 for channel 52+ at Blanco, Texas. See 67 FR 60205, September 25, 2002. TV channel 17 can be allotted to Blanco, Texas, with a zero offset. Since the community of Blanco is located within 275 kilometers of the U.S.-Mexican border, concurrence from the Mexican government has been obtained this allotment. The coordinates for channel 17 at Blanco are North Latitude 29-42-58 and West Longitude 98-30-39. Due to a short spacing, to land mobile channel 17 at Houston, Texas, the use of channel 17 Blanco, Texas, includes a condition. See **SUPPLEMENTARY INFORMATION** for condition details. With this action, this proceeding is terminated.

**DATES:** Effective February 3, 2003.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** The use of channel 17 at Blanco, Texas, includes the following condition: Univision must agree to (1) accept interference from current and future 488-494 MHz land mobile facilities operating from base stations located within 50 miles of the Houston reference point and mobile units operating within 30 miles of their associated base stations; and (2) not radiate a signal in the Houston area where land mobile operation is permitted with a field strength greater than that permitted by a full-power TV station that meets the co-channel distance separation criteria (341.1 km). This is a synopsis of the Commission's Report and Order, MB Docket No. 02-280, adopted December 12, 2002, and released December 19, 2002. The full text of this document is available for

public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

#### List of Subjects in 47 CFR Part 73

Television broadcasting.

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

#### PART 73—[AMENDED]

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

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

#### § 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Texas, is amended by removing TV channel 52+ and adding TV channel 17 at Blanco.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Division, Media Bureau.*

[FR Doc. 02-32285 Filed 12-20-02; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 02-3381, MB Docket No. 02-95, RM-10421]

#### Digital Television Broadcast Service; Odessa, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Odessa Junior College District, substitutes DTV channel \*38 for DTV channel \*22 at Odessa, Texas. See 67 FR 31171, May 9, 2002. DTV channel \*38 can be allotted to Odessa in compliance with the principle community coverage requirements of section 73.625(a) at reference coordinates 31-51-58 N. and 102-22-48 W. with a power of 500, HAAT of 82 meters and with a DTV service population of 259 thousand. Since the community of Odessa is located within 275 kilometers of the U.S.-Mexican border, concurrence from the Mexican government has been obtained for this

allotment. With this action, this proceeding is terminated.

**DATES:** Effective January 27, 2003.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MB Docket No. 02-95, adopted December 6, 2002, and released December 13, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

#### List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

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

#### PART 73—[AMENDED]

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

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

#### § 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Texas, is amended by removing DTV channel \*22 and adding DTV channel \*38 at Odessa.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Division, Media Bureau.*

[FR Doc. 02-32286 Filed 12-20-02; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 02-3382, MB Docket No. 02-220, RM-10518]

#### Digital Television Broadcast Service; Christiansted, VI

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Virgin Blue, Inc., substitutes DTV channel 23 for DTV channel 5 at

Christiansted, Virgin Islands. See 67 FR 5292, August 14, 2002. DTV channel 23 can be allotted to Christiansted in compliance with the principle community coverage requirements of section 73.625(a) at reference coordinates 17–44–40 N. and 64–43–40 W. with a power of 0.85, HAAT of 130 meters and with a DTV service population of 48 thousand. With this action, this proceeding is terminated.

**DATES:** Effective January 27, 2003.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MB Docket No. 02–220, adopted December 6, 2002, and released December 13, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

#### List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

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

#### PART 73—[AMENDED]

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

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

#### § 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Virgin Islands, is amended by removing DTV channel 5 and adding DTV channel 23 at Christiansted.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Division, Media Bureau.*

[FR Doc. 02–32287 Filed 12–20–02; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 99–325; FCC 02–286]

#### Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this proceeding the Commission selects in-band, on-channel (IBOC) as the sole digital technology for the terrestrial radio broadcast service. The Commission announces notification procedures that will allow AM and FM broadcasters to begin interim digital operations immediately using the IBOC systems developed by iBiquity Digital Corporation. Finally, the Commission concludes that adoption of a single IBOC transmission standard would be beneficial, and solicits industry assistance in the development of a formal standard.

**DATES:** Effective January 22, 2003.

**FOR FURTHER INFORMATION CONTACT:** Peter H. Doyle, Audio Services Division, Mass Media Bureau (202) 418–2700.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *First Report and Order* in MM. Docket No. 99–325, adopted October 10, 2002, and released October 11, 2002. The complete text of this *First Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC, and may also be purchased from the Commission's copy contractor, Qualex International, (202) 863–2893, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The complete text is also available on the Internet at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-02-286A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-02-286A1.pdf).

#### Synopsis of First Report and Order

##### 1. Introduction

The Commission initiated this proceeding in November 1999 to advance the development of digital audio broadcasting (DAB) in the terrestrial radio service. The *Notice of Proposed Rulemaking* (NPRM; 64 FR 61054, November 9, 1999) sought comment on alternatives for introducing DAB to the American public. The NPRM cited the promising preliminary results of several IBOC systems under development at the time. IBOC systems, designed to allow the simultaneous transmission of analog and digital

signals within the existing AM and FM bands, had the potential to offer a seamless transition to digital technology without the need for allocation of additional spectrum. The NPRM noted, however, that IBOC technology was still unproven at the time. Therefore, the NPRM also sought comment on the use of other DAB technologies designed to operate in new spectrum.

IBOC developers made significant progress in the years following the NPRM. Two IBOC developers, Lucent Digital Radio, Inc. and USA Digital Radio, Inc., merged to form iBiquity Digital Corporation—the only remaining IBOC proponent. iBiquity has continued to develop its IBOC technology and to cooperate in an extensive independent testing program. In contrast, out-of-band DAB options do not appear viable in the near term. No new spectrum is available for an out-of-band technology, and comments in this proceeding show no broadcast industry proponent for an approach other than IBOC.

##### 2. National Radio Systems Committee Test Program

The NPRM solicited the assistance of the private sector in evaluating candidate DAB systems. The National Radio Systems Committee (NRSC) responded with a comprehensive DAB test program. The only DAB systems submitted to the NRSC for evaluation were the iBiquity AM and FM “hybrid” IBOC systems. The term “hybrid” describes an IBOC system designed to transmit both analog and digital signals within the spectral emission mask of a single AM or FM channel. After an exhaustive testing and evaluation process, the NRSC strongly endorsed iBiquity's AM and FM IBOC systems, with AM IBOC initially limited to daytime use subject to additional testing under nighttime propagation conditions.

##### 3. FM IBOC Test Results

The NRSC judged the audio quality of the iBiquity hybrid FM IBOC system as superior to that of analog FM. Furthermore, the NRSC reports that the hybrid digital signal is more robust than analog FM in the face of impairments such as multipath interference, co- and adjacent channel interference, and noise. Test reports cited a small increase in potential interference to the reception of first-adjacent analog signals, mainly outside normally protected FM coverage contours. The Commission agreed with the NRSC and the majority of commenters that the small increase in potential interference is an acceptable tradeoff in view of the benefits inherent in digital technology.

The NRSC's test program included an assessment of the effects of IBOC on FM subcarriers, secondary services normally used for GPS data, utility load management, foreign language programming, and radio reading services. The NRSC's report concluded that the most common digital subcarrier services, such as the Radio Broadcast Data System, would not be affected by IBOC. The NRSC recommended further testing of the effect of IBOC on analog subcarrier services such as reading for the blind. Additional tests showed that, in some circumstances, analog subcarrier receivers may receive significant new interference from IBOC operations on the second adjacent FM channel. The Commission acknowledges the importance of services such as reading for the blind, and directs broadcasters who implement IBOC to work closely with the providers of these services to resolve complaints of interference. The *First Report and Order* cautions broadcasters that interim IBOC authority may be rescinded if legitimate interference complaints cannot be resolved.

#### 4. AM IBOC Test Results

The iBiquity AM IBOC system offers a dramatic improvement in audio quality compared with analog AM, which is limited by its inherently poor fidelity and susceptibility to noise. This improvement comes at the cost of a bandwidth reduction for the analog portion of a hybrid IBOC AM signal, and of possible new interference from the digital AM IBOC system. The NRSC tests show that introduction of the digital IBOC signal will decrease the signal-to-noise performance of receivers tuned to the host analog signal. The change would not be objectionable to most listeners, according to subjective tests. The addition of the digital IBOC signal may cause interference to the reception of first-adjacent signals; in some cases, first-adjacent interference may occur within the AM station's protected contour. The potential for first-adjacent interference prompted some commenters to suggest reducing the power of the digital sidebands by 6 dB. Other commenters strongly opposed the digital power reduction, citing the necessity of maximizing digital coverage. The Commission declined to require a digital AM power reduction, opting instead to accept the NRSC's recommendation to implement the iBiquity AM IBOC system as tested. In situations where interference is more likely, AM broadcasters may choose to reduce digital carrier power. Furthermore, the Commission may order such a power reduction to resolve

interference complaints when the parties cannot do so. The NRSC did not test the AM IBOC system under nighttime propagation conditions, which are vastly different than daytime conditions in the AM band. Consequently, the NRSC recommended and the Commission agreed that AM IBOC should be limited to daytime use pending further testing.

#### 5. Adoption of IBOC Standards

The NPRM listed the following ten criteria the Commission would use to evaluate a candidate digital audio broadcasting system: enhanced audio fidelity; robustness to interference and other signal impairments; compatibility with existing analog service; spectrum efficiency; flexibility; auxiliary capability; extensibility; accommodation for existing broadcasters; coverage; and affordability. The record in this proceeding demonstrates that the iBiquity IBOC systems, evaluated according to the foregoing criteria, offer the best way to advance the Commission's policy goals for digital transition. The iBiquity systems enjoy strong support from the broadcast industry, and are the only systems that could be implemented in the near future. Accordingly, the *First Report and Order* selects IBOC as the sole digital transmission technology for terrestrial broadcasters. The *First Report and Order* agrees with the majority of commenters that designation of a single IBOC standard would facilitate the efficient and orderly transition to digital radio. The Commission therefore solicits the assistance of the public in a formal standard-setting process, and notes that the NRSC has already formed an IBOC standards development working group.

#### 6. Interim IBOC Operation

To encourage rapid consumer acceptance of the new IBOC technology, the Commission permits AM and FM broadcasters to begin interim IBOC operations immediately using the iBiquity technology. Upon approval by the Office of Management and Budget, broadcasters who initiate IBOC operation shall notify the Commission by letter. The notification letter shall include certifications that the effective radiated power of the analog signal remains as authorized, and that the station remains in compliance with the Commission's rules governing human exposure to radiofrequency radiation.

#### Final Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980, as amended (RFA; see 5 U.S.C. 601–602), requires that a regulatory

flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” 5 U.S.C. 601(b). The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” 5 U.S.C. 601(6). In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. 5 U.S.C. 601(3). A “small business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

As required by the RFA, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM in MM Docket No. 99–325. The Commission sought written public comments on the proposals in the NPRM including comments on the IRFA. The Office of Advocacy, U.S. Small Business Administration filed comments asserting that the Commission, in the IRFA, failed to adequately consider the potential impact of digital transition on small business and did not discuss alternatives designed to minimize regulatory burdens on small entities. Specifically, SBA states that “[B]efore concluding that analog systems must sunset, the Commission should provide data on the cost of transition and should ensure that DAB will not burden small business.” SBA further states that the Commission should make the results of the IBOC tests public to determine viability and compatibility including any interference concerns. It suggests that “\* \* \* a better course of action might be to permit stations to install digital systems but only if they do not cause interference to analog systems. In this scenario, digital and analog systems would operate concurrently.” According to SBA, the Commission “\* \* \* should issue additional notices of proposed rulemaking as it gleans additional information regarding the feasibility and desirability of DAB transition.” Finally, SBA states that the Commission failed to discuss alternatives that would minimize the regulatory burden on small entities.

Although, in this *First Report and Order* the Commission takes two actions, neither of which will have a significant impact on small entities, our approach to digital implementation is consistent with that advocated by SBA. First, the Commission endorses IBOC

technology for use by AM and FM digital audio broadcasting operations. Second, the Commission authorizes interim, voluntary digital broadcasting operations for both AM and FM licensees. Only those broadcasters wishing to take advantage of this opportunity to begin digital broadcasting need comply with any notification or technical requirements. Those broadcasters choosing not to initiate such digital operations will not be materially affected. The Commission will issue a Further NPRM proposing final rules for digital audio broadcasting and will consider the impact of any final rules on small entities in connection with that further proceeding. We therefore certify that the requirements of this *First Report and Order* will not have a significant economic impact on a substantial number of small entities.

In adopting this approach, we carefully analyzed the results of the IBOC tests and we conclude that any

minimal interference that might be caused is outweighed by the benefits of digital service. Such benefits will accrue to small entities as well as large businesses should they choose to implement digital operation. In addition, we adopt procedures for these voluntary operations to assure that any interference complaints are resolved quickly. Under this plan, analog and digital systems will operate concurrently, a result advocated by SBA. With respect to the potential cost of implementation, preliminary estimates indicate that that IBOC costs are not unreasonable and that use of IBOC is inherently less costly than other systems. Again, we emphasize that the interim operations adopted here are strictly voluntary and thus no broadcaster will be compelled to incur any costs. Finally, as SBA suggests, we will issue a Further NPRM to solicit comment on any final digital transition rules.

The Commission will send a copy of the *First Report and Order*, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A). In addition, the *First Report and Order* and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, 5 U.S.C. 605(b).

This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact Brian Millin at (202) 418-7426 (voice), (202) 418-7365 (TTY), or via e-mail at [bmillin@fcc.gov](mailto:bmillin@fcc.gov).

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 02-32212 Filed 12-20-02; 8:45 am]

BILLING CODE 6712-01-P

# Proposed Rules

Federal Register

Vol. 67, No. 246

Monday, December 23, 2002

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 TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 121

[Docket No. FAA-2002-13464; Notice No. 02-17]

RIN 2120-AC84

#### Improved Seats in Air Carrier Transport Category Airplanes; Correction

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Supplemental notice of proposed rulemaking (SNPRM); correction.

**SUMMARY:** This document makes a correction to the proposed rule published in the **Federal Register** on October 4, 2002 (67 FR 62294), which proposes to require that all passenger and flight attendant seats in transport category airplanes used in part 121 passenger-carrying operations meet improved crashworthiness standards. The FAA inadvertently retained a paragraph in the preamble that should have been removed in the editing process of the original SNPRM. This document removes that paragraph.

**FOR FURTHER INFORMATION CONTACT:** Hal Jensen, Aircraft Certification Service, Aircraft Engineering Division, AIR-120, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8807; facsimile (202) 267-5340.

**SUPPLEMENTARY INFORMATION:** On October 4, 2002, the FAA published Notice No. 02-17, Improved Seats in Air Carrier Transport Category Airplanes (67 FR 62294). The SNPRM proposed to amend the regulations to require that all passenger and flight attendant seats in transport category airplanes used in part 121 passenger-carrying operations meet improved crashworthiness standards. The FAA inadvertently retained a paragraph in the preamble that should have been removed in the editing process of the original SNPRM. In the

preamble discussion of the new proposal, on page 62299, in the third column, the third paragraph states that the FAA is proposing an amendment to 14 CFR 121.583(a). The FAA does not propose an amendment to 14 CFR 121.583 and intended that this paragraph be removed in the editing process. This document removes that paragraph.

#### Correction

In proposed rule FR Doc. 02-25051, published on October 4, 2002 (67 FR 62294), make the following correction:

1. On page 62299, in the third column, remove the third full paragraph, which begins "The FAA also notes \* \* \*".

Issued in Washington, DC on December 13, 2002.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

[FR Doc. 02-32144 Filed 12-20-02; 8:45 am]

**BILLING CODE 4910-13-P**

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

[Regulation Nos. 4 and 16]

RIN 0960-AF32

#### Revised Medical Criteria for Evaluating Impairments That Affect Multiple Body Systems

**AGENCY:** Social Security Administration.

**ACTION:** Proposed rules.

**SUMMARY:** We propose to revise the criteria in the Listing of Impairments (the listings) that we use to evaluate claims involving impairments that affect multiple body systems. We apply these criteria when you claim benefits based on disability under title II and title XVI of the Social Security Act (the Act). The proposed revisions reflect current medical knowledge, treatment, and methods of evaluating impairments that affect multiple body systems.

**DATES:** To be sure your comments are considered, we must receive them by February 21, 2003.

**ADDRESSES:** You may give us your comments by using: our Internet site facility (*i.e.*, Social Security Online) at <http://www.ssa.gov/regulations/>; e-mail to [regulations@ssa.gov](mailto:regulations@ssa.gov); by telefax to (410) 966-2830, or, by letter to the

Commissioner of Social Security, PO Box 17703, Baltimore, Maryland 21235-7703. You may also deliver them to the Office of Process and Innovation Management, Social Security Administration, 2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, at <http://policy.ssa.gov/prpublic.nsf/LawsRegs> or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

**Electronic Version:** The electronic file of this document is available on the date of publication in the **Federal Register** at [http://www.access.gpo.gov/su\\_docs/aces/aces140.html](http://www.access.gpo.gov/su_docs/aces/aces140.html). It is also available on the Internet site for SSA (*i.e.*, Social Security Online): <http://www.ssa.gov/regulations/>.

#### FOR FURTHER INFORMATION CONTACT:

Suzanne DiMarino, Social Insurance Specialist, Office of Process and Innovation Management, Social Security Administration, 2109 West Low Rise, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, (410) 965-1769 or TTY (410) 966-5609. For information on eligibility or filing for benefits, call our national toll-free number 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet web site, Social Security Online, at <http://www.ssa.gov>.

#### SUPPLEMENTARY INFORMATION:

#### What Programs Would These Proposed Regulations Affect?

These proposed regulations would affect disability determinations and decisions that we make under title II and title XVI of the Act. In addition, to the extent that Medicare entitlement and Medicaid eligibility are based on whether you qualify for disability benefits under title II or title XVI, these proposed regulations would also affect the Medicare and Medicaid programs.

#### Who Can Get Disability Benefits?

Under title II of the Act, we provide for the payment of disability benefits if you are disabled and belong to one of the following three groups:

- Workers insured under the Act,
- Children of insured workers, and
- Widows, widowers, and surviving divorced spouses (see 20 CFR 404.336) of insured workers.

Under title XVI of the Act, we provide for Supplemental Security Income (SSI) payments on the basis of disability if you are disabled and have limited income and resources.

**How Do We Define Disability?**

Under both the title II and title XVI programs, disability must be the result of any medically determinable physical or mental impairment or combination of impairments that meets the statutory

duration requirement; that is, it must be expected to result in death or must have lasted or be expected to last for a continuous period of at least 12 months. Our definitions of disability are shown in the following table:

If you file a claim under * * *	And you are * * *	Disability means you have a medically determinable impairment(s) that meets the statutory duration requirement and results in * * *
Title II .....	An adult or a child .....	The inability to do any substantial gainful activity (SGA).
Title XVI .....	A person age 18 or older .....	The inability to do any SGA.
Title XVI .....	A person under age 18 .....	Marked and severe functional limitations.

**What Are The Listings?**

The listings are examples of impairments that we consider severe enough to prevent a person from doing any gainful activity or that result in “marked and severe functional limitations” in children seeking SSI payments under title XVI of the Act. Although we publish the listings only in appendix 1 to subpart P of part 404 of our rules, we incorporate them by reference in the SSI program in § 416.925 of our regulations, and apply them to claims under both title II and title XVI of the Act.

**How Do We Use the Listings?**

The listings are in two parts. There are listings for adults (part A) and for children (part B). If you are a person age 18 or over, we apply the listings in part A when we assess your claim, and we never use the listings in part B.

If you are a person under age 18, we first use the criteria in part B of the listings. If the listings in part B do not apply, and the specific disease process(es) has a similar effect on adults and children, we then use the criteria in part A. (See §§ 404.1525 and 416.925.)

If your impairment(s) does not meet any listing, we will also consider whether it medically equals any listing; that is, whether it is as medically severe. (See §§ 404.1526 and 416.926.)

We use the listings only to decide that people are disabled or that they are still disabled. We will never deny your claim or decide that you no longer qualify for benefits because your impairment(s) does not meet or medically equal a listing. If you have a severe impairment(s) that does not meet or medically equal any listing, we may still find you disabled based on other rules in the “sequential evaluation process” that we use to evaluate all disability claims. (See §§ 404.1520, 416.920, and 416.924.)

Also, when we conduct reviews to determine whether your disability continues, we will not find that your disability has ended based only on any

changes in the listings. Our regulations explain that, when we change our listings, we continue to use our prior listings when we review your case, if you qualified for disability benefits or SSI payments based on our determination or decision that your impairment(s) met or medically equaled the listings. In these cases, we determine whether you have experienced medical improvement, and if so, whether the medical improvement is related to the ability to work. If your condition(s) has medically improved so that you no longer meet or medically equal the prior listing, we evaluate your case further to determine whether you are currently disabled. We may find that you are currently disabled, depending on the full circumstances of your case. See §§ 404.1594(c)(3)(i) and 416.994(b)(2)(iv)(A). If you are a child who is eligible for SSI payments, we follow a similar rule after we decide that you have experienced medical improvement in your condition(s). See § 416.994a(b)(2).

**Why Are We Proposing To Revise the Listings for Impairments That Affect Multiple Body Systems?**

We last published final rules revising the adult listings for impairments that affect multiple body systems in the **Federal Register** on May 19, 2000 (65 FR 31800); the rules were effective on June 19, 2000. In that document, we said that those rules would be effective for 8 years unless we extended them, or revised and issued them again. The current adult (Part A) listings for impairments that affect multiple body systems will no longer be effective on June 19, 2008 unless we extend them, or revise and issue them again.

We last published final rules revising the childhood listings for impairments that affect multiple body systems in the **Federal Register** on December 12, 1990 (55 FR 51204). The current childhood (Part B) listings for impairments that affect multiple body systems will no

longer be effective on July 2, 2003 (66 FR 34361).

We are proposing these revisions because we decided to update the medical criteria in the listings and to provide more information about how we evaluate impairments that affect multiple body systems.

**When Will We Start To Use These Rules?**

We will not use these rules until we evaluate the public comments we receive on them, determine whether they should be issued as final rules, and issue final rules in the **Federal Register**. If we publish final rules, we will explain in the preamble how we will apply them, and summarize and respond to the public comments. Until the effective date of any final rules, we will continue to use our current rules.

**How Long Would These Proposed Rules Be Effective?**

If we publish these proposed rules as final rules, they will remain in effect for 8 years after the date they become effective, unless we extend them, or revise and issue them again.

**What Revisions Are We Proposing To Make?**

- We are proposing to:
- Change the name of this body system listing from “Multiple Body Systems” to “Impairments That Affect Multiple Body Systems,”
  - Expand, update, and reorganize the introductory text,
  - Remove current listing 110.07,
  - Make conforming changes, when applicable, in related regulations, and
  - Make nonsubstantive editorial changes.

**Why Are We Proposing To Change the Name of This Body System Listing?**

We are proposing to change the name of this body system listing from “Multiple Body Systems” to “Impairments That Affect Multiple Body Systems” to more accurately

reflect that we use this listing to evaluate single impairments that affect two or more body systems.

### How Are We Proposing to Change the Introductory Text to the Adult Multiple Body Systems Listing?

#### 10.00 Impairments That Affect Multiple Body Systems

To provide additional guidance, we propose to expand, update, and reorganize the introductory text to the listing of impairments that affect multiple body systems. A detailed description of the proposed introductory text follows.

#### Proposed 10.00A—What Impairment Do We Evaluate Under This Body System Listing?

This section expands and clarifies current 10.00A, “Down syndrome (except for mosaic Down syndrome)” and provides a description of Down syndrome:

- Proposed 10.00A1 explains that we evaluate non-mosaic Down syndrome under this body system listing.
- Proposed 10.00A2 is a new paragraph that describes Down syndrome and explains that it exists in “non-mosaic” and “mosaic” forms.
- Proposed 10.00A3a describes non-mosaic Down syndrome. Proposed 10.00A3b explains that we evaluate non-mosaic Down syndrome under proposed listing 10.06. It also explains that, if you have confirmed non-mosaic Down syndrome, we consider you disabled from birth. This provision is currently part of listing 10.06, but we propose to move it here, because it is a criterion for establishing when the person is first disabled under our rules, which belongs in the introductory text.
- Proposed 10.00A4a describes mosaic Down syndrome. Proposed 10.00A4b explains that we evaluate adults with confirmed mosaic Down syndrome under the listing criteria for the affected body system(s) on an individual case basis and refers to 10.00C for an explanation of how we adjudicate claims involving mosaic Down syndrome.

#### Proposed 10.00B—What Documentation Do We Need To Establish That You Have An Impairment That Affects Multiple Body Systems?

This section, which expands and modifies current 10.00B, explains the documentation we need to establish that you have an impairment(s) that affects multiple body systems. There are two subsections:

- Proposed 10.00B1 explains that the documentation we need to establish the

existence of a medically determinable impairment must come from an acceptable medical source. We require such documentation for any impairment. The documentation must include a clinical description of the abnormal physical findings and definitive laboratory tests, including chromosomal analysis, where appropriate.

- Proposed 10.00B2 explains that, in lieu of a copy of the actual laboratory report, we will accept medical evidence that is persuasive that a positive diagnosis has been confirmed by appropriate laboratory testing at some time prior to our evaluation. This section includes the guidance in current 10.00B on what we mean by medical evidence that is “persuasive.”

#### Proposed 10.00C—How Do We Evaluate Impairments That Affect Multiple Body Systems That Do Not Meet the Criteria of the Listing In This Body System?

- Proposed 10.00C1 explains that if your severe impairment(s) that affects multiple body systems does not meet the listing in this body system, we must consider whether you have another impairment(s) that meets the criteria of a listing in another body system.
- Proposed 10.00C2 gives some examples of the many other impairments that can affect multiple body systems, such as trisomy X syndrome, fragile X syndrome, phenylketonuria (PKU), caudal regression syndrome, and fetal alcohol syndrome. We also explain that, because the body systems that these impairments can affect vary, and the effects on each body system can differ in severity and progression, we would evaluate these impairments under the listing criteria of the affected body system on an individual case basis. Proposed 10.00C2 generally corresponds to current 10.00C.
- Proposed 10.00C3 explains that, if you have a severe medically determinable impairment(s) that does not meet a listing, we will consider whether your impairment(s) medically equals a listing. If not, we will proceed to the fourth and, if necessary, fifth steps of the sequential evaluation process in §§ 404.1520 and 416.920. We explain that we follow the rules in §§ 404.1594 and 416.994, as appropriate, when we decide whether you continue to be disabled.

#### Proposed 10.01—Category of Impairments, Impairments That Affect Multiple Body Systems

The following is an explanation of the proposed changes to the listing.

#### Proposed Listing 10.06—Non-Mosaic Down Syndrome

We propose to simplify the heading to make it clear that we evaluate only non-mosaic Down syndrome under this listing. We also propose to move the last sentence of current 10.06 to proposed 10.00A3b because it is a criterion for establishing when the person is first disabled under our rules, which belongs in the introductory text.

#### What Changes Do We Propose for Children?

If the same criteria exist in both the adult and childhood rules, we propose to make the same changes in the childhood rules that we propose for the adult rules for the same reasons we made the changes in the adult rules.

To provide additional guidance, we propose to expand, update, and reorganize the introductory text to the listing of impairments that affect multiple body systems. A description of the proposed introductory text follows.

#### Proposed 110.00A—What kinds of Impairments Do We Evaluate Under This Body System Listing?

This section describes the kinds of impairments that we evaluate under these listings.

- Proposed 110.00A1 explains that we use these listings when a single impairment affects two or more body systems, and describes what kinds of impairments we evaluate under these listings. We also provide a brief description of the effects that these impairments generally have on a child’s ability to perform age-appropriate activities and explain how we use the term “very seriously.”
- Proposed 110.00A2 describes Down syndrome.
- Proposed 110.00A3a describes non-mosaic Down syndrome. Proposed 110.00A3b explains that we evaluate children with confirmed non-mosaic Down syndrome under proposed listing 110.06.
- Proposed 110.00A4a describes mosaic Down syndrome. Proposed 110.00A4b explains that we evaluate children with confirmed mosaic Down syndrome under the listing criteria for the affected body system(s) on an individual case basis.
- Proposed 110.00A5a describes what we mean by “catastrophic congenital abnormalities or diseases.” We explain that it is reasonably certain that these abnormalities and diseases result in early death or interfere very seriously with development. “Very seriously” is consistent with our definition of “extreme” limitation in § 416.926a(e)(3).



Proposed 110.00A5b explains that we evaluate catastrophic congenital abnormalities or diseases under proposed listing 110.08.

*Proposed 110.00B—What Documentation Do We Need To Establish That You Have an Impairment That Affects Multiple Body Systems?*

This section, which expands and modifies current 110.00B, explains the documentation we need to establish that you have an impairment(s) that affects multiple body systems. There are two subsections:

- Proposed 110.00B1 explains the documentation we need to establish that you have a medically determinable impairment. This section is substantively the same as proposed section 10.00B1 of the part A listings for adults.

- Proposed 110.00B2 explains what medical evidence we will accept in lieu of a copy of the actual laboratory report. The medical evidence must be persuasive that a positive diagnosis has been confirmed by appropriate laboratory testing at some time prior to our evaluation. This section is substantively the same as proposed section 10.00B2 of the part A listings for adults.

*Proposed 110.00C—How Do We Evaluate Impairments That Affect Multiple Body Systems That Do Not Meet The Criteria of The Listings In This Body System?*

Proposed 110.00C is substantively similar to proposed section 10.00C of the part A listings for adults.

- Proposed 110.00C1 explains that if your severe impairment(s) that affects multiple body systems does not meet the criteria for a listing in this body system, we must also consider whether you have an impairment(s) that meets the criteria of a listing in another body system.

- Proposed 110.00C2 gives some examples of the many other impairments that can affect multiple body systems, such as trisomy X syndrome, fragile X syndrome, phenylketonuria (PKU), caudal regression syndrome, and fetal alcohol syndrome. We also explain that, because the body systems that these impairments can affect vary, and the effects on each body system can differ in severity and progression, we would evaluate these impairments under the listing criteria of any affected body system on an individual case basis.

- Proposed 110.00C3 explains that, if your severe medically determinable impairment(s) does not meet a listing, we will consider whether your

impairment(s) medically equals a listing or, in the case of a claim for SSI payments, functionally equals the listings. Proposed 110.00C3 also explains that if you are a child receiving SSI payments, we use the rules in § 416.994a to decide whether you continue to be disabled.

*Proposed 110.01 Category of Impairments, Impairments That Affect Multiple Body Systems*

The following is an explanation of the proposed changes to the listings.

*Proposed Listing 110.06—Non-Mosaic Down Syndrome*

We propose to simplify the heading to make it clear that we evaluate only non-mosaic Down syndrome under this listing. We also propose to move the last sentence of current 110.06 to proposed 110.00A3b because it is a criterion for establishing when the child is first disabled under our rules, which belongs in the introductory text.

*Current Listing 110.07—Multiple Body Dysfunction*

We propose to remove current listing 110.07 for two reasons.

- First, the A criterion in this listing, published December 12, 1990, was created to evaluate physical impairments in infants or young children. We wrote this listing before we had the policy of functional equivalence (§ 416.926a) to help adjudicators evaluate physical impairments in very young children. Current listing 110.07A is now outdated and unnecessary because we have made a number of changes in our other listings and regulations, including the implementation of the functional equivalence policy more than 10 years ago, that provide better rules for evaluating infants and toddlers.

- Second, the remaining criteria, 110.07B through F, are solely reference listings that refer adjudicators to another listing for the affected body system. As we update the listings in each of the body systems, we are removing reference listings because they are redundant.

*Proposed Listing 110.08—A Catastrophic Congenital Abnormality or Disease*

In proposed 110.08, we explain that such abnormalities and diseases are generally regarded as being incompatible with prolonged life outside the uterus (110.08A) or interfere very seriously with development (110.08B). In proposed 110.08A, we are changing the phrase “incompatible with extrauterine life” in current listing

110.08A to “incompatible with prolonged life outside the uterus” to recognize that children with some catastrophic congenital abnormalities or diseases may live for many months or even a few years. In proposed 110.08B, we are changing the phrase “attainment of the growth and development of 2 years is not expected to occur” in the current listing to “interfere very seriously with development.” The new language takes into consideration advances in evaluation and management of these abnormalities and diseases, and is consistent with our definition of “extreme” limitation in § 416.926a(e)(3). We also propose to make listing 110.08 clearer and easier to understand by:

- Changing the word “abnormalities” in current listing 110.08 to “abnormality” to emphasize that there need be only a single abnormality or disease involved; and

- Moving the requirement for “a positive diagnosis” from current listings 110.08A and B to the opening statement in proposed listing 110.08.

**What Other Rules Are We Proposing to Change?**

We propose to remove the last sentence of 101.00B2c(2), “How we assess inability to perform fine and gross movements in very young children,” in the introductory text of the childhood musculoskeletal listings, because it refers adjudicators to current 110.07A, which we propose to remove from the multiple body listings. We propose to replace the reference to 110.07A with the following statement: “For such children, an extreme level of limitation means skills or performance at no greater than one-half of age-appropriate expectations based on an overall developmental assessment rather than on one or two isolated skills.” This statement provides clearer guidance for assessing extreme limitation of fine and gross movements in very young children, and is the same guidance we provide in 101.00B2b(2).

We propose to change the presumptive disability citation for Down syndrome in § 416.934, “Impairments which may warrant a finding of presumptive disability or presumptive blindness” (§ 416.934(g)) from “Allegation of Down’s syndrome (Mongolism)” to “Allegation of Down Syndrome.” This will update the language of our rules to reflect current terminology.

**Clarity of These Proposed Rules**

Executive Order (E.O.) 12866, as amended by E.O. 13258, requires each agency to write all rules in plain language. In addition to your

substantive comments on these proposed rules, we invite your comments on how to make these proposed rules easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules 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 rules easier to understand?

**Regulatory Procedures**

*Executive Order (E.O.) 12866*

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the criteria for a significant regulatory action under E.O. 12866, as amended by E.O. 13258. Thus, they were subject to OMB review.

*Regulatory Flexibility Act*

We certify that these proposed rules would not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

*Paperwork Reduction Act*

These proposed rules contain reporting requirements at 10.00B, 10.00C, 110.00B, and 110.00C. The public reporting burden is accounted for in the Information Collection Requests for the various forms that the public uses to submit the information to SSA. Consequently, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules. We are seeking clearance of the burdens referenced in these rules because they were not considered during the clearance of the forms. An Information Collection request has been submitted to OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be submitted to the Social

Security Administration at the following address: Social Security Administration, Attn: SSA Reports Clearance Officer, Rm. 1338 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235-6401.

Comments can be received between 30 and 60 days after publication of this notice and will be most useful if received by SSA within 30 days of publication.

**References**

We consulted the following sources when developing these proposed rules:

Goldman, L. & Bennett, J.C. (Eds.). (2000). Cecil Textbook of Medicine, (21st ed.). (126-129). Philadelphia: W. B. Saunders Company.

Fauci, A.S., et al. (Eds.). (1998). Harrison's Principles of Internal Medicine, (14th ed.). (365-403, 2087-2131). New York: McGraw-Hill.

Behrman, R.E., Kliegman, R.M. & Jenson, H.B. (Eds.). (2000). Nelson's Textbook of Pediatrics (16th ed.). (313-342). Philadelphia: W.B. Saunders Company.

These references are included in the rulemaking record for these proposed rules and are available for inspection by interested persons by making arrangements with the contact person shown in this preamble.

**List of Subjects**

*20 CFR Part 404*

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

*20 CFR Part 416*

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: September 25, 2002.

**Jo Anne B. Barnhart,**  
*Commissioner of Social Security.*

For the reasons set out in the preamble, we propose to amend subpart P of part 404 and subpart I of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

**PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950— )**

**Subpart P—[Amended]**

1. The authority citation for subpart P of part 404 continues to read as follows:

**Authority:** Secs. 202, 205(a), (b), and (d)-(h), 216(i), 221(a) and (i), 222(c), 223, 225,

and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)-(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104-193, 110 Stat. 2105, 2189.

2. Item 11 in the introductory text before part A of appendix 1 to subpart P of part 404 is revised to read as follows:

**Appendix 1 to Subpart P Of Part 404— Listing of Impairments**

\* \* \* \* \*

11. Impairments That Affect Multiple Body Systems (10.00 and 110.00): [Date 8 years after effective date of final regulations.]

\* \* \* \* \*

3. The list of sections for part A is amended by revising the heading for section 10.00 to read as follows:

**Part A**

\* \* \* \* \*

**10.00 Impairments That Affect Multiple Body Systems**

\* \* \* \* \*

4. Listing 10.00, Multiple Body Systems, of part A of appendix 1 of subpart P of part 404 is revised to read as follows:

\* \* \* \* \*

**10.00 Impairments That Affect Multiple Body Systems**

*A. What impairment do we evaluate under this body system listing?*

1. *General.* We evaluate non-mosaic Down syndrome under this body system listing.

2. *What is Down syndrome?* Down syndrome is a chromosomal condition, present before birth, in which there are three chromosomes 21 instead of two. The three chromosomes may be separate (trisomy) or one chromosome may be attached to another (translocation). The extra chromosomal material changes the orderly development of the body and brain. Down syndrome is characterized by a complex of physical characteristics, delayed physical development, and mental retardation. It is often accompanied by heart disease, vision defects, chronic respiratory infections, and other conditions. It exists in non-mosaic and mosaic forms.

3. *What is non-mosaic Down syndrome?*

a. Non-mosaic Down syndrome occurs when the extra chromosome is replicated in every cell of the body. This form of Down syndrome is responsible for 95 percent of all cases. Virtually all cases of non-mosaic Down syndrome affect the mental, neurological, and skeletal systems, and often other body systems such as cardiac, endocrine, and gastrointestinal.

b. We evaluate adults with confirmed non-mosaic Down syndrome under 10.06. If you have confirmed non-mosaic Down syndrome, we consider you disabled from birth.

4. *What is mosaic Down syndrome?*

a. Mosaic Down syndrome occurs when you have some cells with normal chromosomes and some cells with extra chromosomal material. When this occurs, there is a mixture of two types of cells. Some of the cells contain 46 chromosomes and some of the cells contain 47 chromosomes. Mosaic Down syndrome occurs far less frequently than non-mosaic Down syndrome and can have features that manifest in a wide range of severity. Mosaic Down syndrome can be profound and disabling, but it also can be so slight as to be undetected clinically.

b. We evaluate adults with confirmed mosaic Down syndrome under the listing criteria for the affected body system(s) on an individual case basis, as described in 10.00C.

**B. What Documentation Do We Need To Establish That You Have an Impairment That Affects Multiple Body Systems?**

1. *General.* We need documentation from an acceptable medical source as defined in §§ 404.1513(a) and 416.913(a) to establish that you have a medically determinable impairment. The documentation must include a clinical description of the abnormal physical findings and definitive laboratory tests, including chromosomal analysis, where appropriate.

2. *What will we accept as medical evidence in lieu of the actual laboratory report?* When the actual laboratory report is unavailable, we will accept medical evidence that is persuasive that a positive diagnosis has been confirmed by appropriate laboratory testing at some time prior to our evaluation. To be persuasive, a report from an acceptable medical source must state that appropriate testing was conducted and the results confirmed the diagnosis. The report must be consistent with other evidence in your case record, for example, the description of abnormal physical findings, your educational history, or, if available, the results of psychological testing.

**C. How Do We Evaluate Impairments That Affect Multiple Body Systems That Do Not Meet the Criteria of the Listing in This Body System?**

1. Non-mosaic Down syndrome (10.06) is an example of a common impairment that affects multiple body systems that we consider severe enough to prevent you from doing any gainful activity. If your severe impairment(s) does not meet the criteria of this listing, we must also consider whether you have an impairment(s) that meets the criteria of a listing in another body system.

2. There are many other impairments that cause deviation from, or interruption of, the normal function of the body, but the degree of deviation may vary widely from person to person. Therefore, the resulting functional limitations and the progression of those limitations also vary widely. For these reasons, we will evaluate these impairments on an individual case basis under the listing criteria in any affected body system. Examples of such impairments include trisomy X syndrome, fragile X syndrome, phenylketonuria (PKU), caudal regression syndrome, and fetal alcohol syndrome.

3. If you have a severe medically determinable impairment(s) that does not

meet a listing, we will consider whether your impairment(s) medically equals a listing. (See §§ 404.1526 and 416.926.) If your impairment(s) does not meet or medically equal a listing, you may or may not have the residual functional capacity to engage in substantial gainful activity. In that situation, we proceed to the fourth and, if necessary, the fifth steps of the sequential evaluation process in §§ 404.1520 and 416.920. If you are an adult, we use the rules in §§ 404.1594 and 416.994, as appropriate, when we decide whether you continue to be disabled.

**10.01 Category of Impairments, Impairments That Affect Multiple Body Systems**

10.06 *Non-mosaic Down syndrome*, established by clinical and laboratory findings, as described in 10.00B.

\* \* \* \* \*

5. The list of sections for part B is amended by revising the heading title for section 110.00 to read as follows:

**Part B**

\* \* \* \* \*

110.00 Impairments That Affect Multiple Body Systems.

\* \* \* \* \*

6. Section B.2.c.(2) of the introductory text of 101.00, Musculoskeletal System, of Part B of appendix 1 of Subpart P of part 404 is revised to read as follows:

\* \* \* \* \*

B. \* \* \*

2. \* \* \*

\* \* \* \* \*

C. \* \* \*

\* \* \* \* \*

(2) *How we assess inability to perform fine and gross movements in very young children.* For very young children, the consideration is limitations in the ability to perform comparable age-appropriate activities involving the upper extremities given normal developmental expectations. For such children, an extreme level of limitation means skills or performance at no greater than one-half of age-appropriate expectations based on an overall developmental assessment rather than on one or two isolated skills.

\* \* \* \* \*

7. Listing 110.00, Multiple Body Systems, of part B of appendix 1 of subpart P of part 404 is revised to read as follows:

\* \* \* \* \*

**110.00 Impairments That Affect Multiple Body Systems**

**A. What Kinds of Impairments Do We Evaluate Under This Body System listing?**

1. *General.* We use these listings when a single impairment affects two or more body systems. Under these listings, we evaluate impairments that affect multiple body systems due to non-mosaic and mosaic Down syndrome or a catastrophic congenital abnormality or disease. These kinds of

impairments generally produce long-term, if not lifelong, interference with age-appropriate activities. Some of them result in early death or interfere very seriously with development. We use the term “very seriously” in these listings to describe an “extreme” limitation of functioning as defined in § 416.926a(e)(3).

2. *What is Down syndrome?* Down syndrome is a chromosomal condition, present before birth, in which there are three chromosomes 21 instead of two. The three chromosomes may be separate (trisomy) or one chromosome may be attached to another (translocation). This extra chromosomal material changes the orderly development of the body and brain. Down syndrome is characterized by a complex of physical characteristics, delayed physical development, and mental retardation. It is often accompanied by heart disease, vision defects, chronic respiratory infections, and other conditions. It exists in non-mosaic and mosaic forms.

3. *What is non-mosaic Down syndrome?*

a. Non-mosaic Down syndrome occurs when the extra chromosome is replicated in every cell of the body. This form of Down syndrome is responsible for 95 percent of all cases. Virtually all cases of non-mosaic Down syndrome affect the mental, neurological, and skeletal systems, and often other body systems such as cardiac, endocrine, and gastrointestinal.

b. We evaluate children with confirmed non-mosaic Down syndrome under listing 110.06. If you have confirmed non-mosaic Down syndrome, we consider you disabled from birth.

4. *What is mosaic Down syndrome?*

a. Mosaic Down syndrome occurs when you have some cells with normal chromosomes and some cells with extra chromosomal material. When this occurs, there is a mixture of two types of cells. Some of the cells contain 46 chromosomes and some of the cells contain 47 chromosomes. Mosaic Down syndrome occurs far less frequently than non-mosaic Down syndrome and can have features that manifest in a wide range of severity. Mosaic Down syndrome can be profound and disabling, but it also can be so slight as to be undetected clinically.

b. We evaluate children with confirmed mosaic Down syndrome under the listing criteria for the affected body system(s) on an individual case basis.

5. *What are catastrophic congenital abnormalities or diseases?*

a. Catastrophic congenital abnormalities or diseases are present at birth although they may not be apparent immediately. They cause deviation from, or interruption of, the normal function of the body and are reasonably certain to result in early death or interfere very seriously with development.

b. We evaluate catastrophic congenital abnormalities or diseases under listing 110.08.

**B. What Documentation Do We Need to Establish That You Have an Impairment That Affects Multiple Body Systems?**

1. *General.* We need documentation from an acceptable medical source as defined in §§ 404.1513(a) and 416.913(a) to establish

that you have a medically determinable impairment. The documentation must include a clinical description of the abnormal physical findings and definitive laboratory tests, including chromosomal analysis, where appropriate.

2. *What will we accept as medical evidence in lieu of the actual laboratory report?* When the actual laboratory report is unavailable, we will accept medical evidence that is persuasive that a positive diagnosis has been confirmed by appropriate laboratory testing at some time prior to our evaluation. To be persuasive, a report from an acceptable medical source must state that appropriate testing was conducted and that the results confirmed the diagnosis. The report must be consistent with other evidence in your case record, for example, the description of abnormal physical findings, your educational history, or, if available, the results of psychological testing.

*C. How Do We Evaluate Impairments That Affect Multiple Body Systems That Do Not Meet the Criteria of the Listings in This Body System?*

1. These listings are examples of common impairments that affect multiple body systems that we consider severe enough to result in marked and severe functional limitations. If your severe impairment(s) does not meet the criteria of any of these listings, we must also consider whether you have an impairment(s) that meets the criteria of a listing in another body system.

2. There are many other impairments that cause deviation from, or interruption of, the normal function of the body, but the degree of deviation may vary widely from child to child. Therefore, the resulting functional limitations and the progression of those limitations are more variable than with catastrophic congenital abnormalities or diseases described in 110.00A5. For these reasons, we evaluate these impairments on an individual case basis under the listing criteria in any affected body system. Examples of such impairments include trisomy X syndrome, fragile X syndrome, phenylketonuria (PKU), caudal regression syndrome, and fetal alcohol syndrome.

3. If you have a severe medically determinable impairment(s) that does not meet a listing, we will consider whether your impairment(s) medically equals a listing, and, in the case of a claim for SSI payments, functionally equals the listings. (See §§ 404.1526, 416.926, and 416.926a.) If you are receiving SSI payments, when we decide whether you continue to be disabled, we use the rules in § 416.994a.

**110.01 Category of Impairments, Impairments That Affect Multiple Body Systems**

110.06 *Non-mosaic Down syndrome*, established by clinical and laboratory findings, as described in 110.00B.

110.08 *A catastrophic congenital abnormality or disease*. With a positive diagnosis as described in 110.00B, AND THAT:

A. Is generally regarded as being incompatible with prolonged life outside the uterus (for example, anencephaly, trisomy D or E, cyclopia);

OR

B. Interferes very seriously with development; for example, 5p-syndrome (cri du chat) or Tay-Sachs disease.

\* \* \* \* \*

**PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED**

**Subpart I—[Amended]**

7. The authority citation for subpart I of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)-(e), 14(a) and 15, Pub. L. 98-460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

8. Section 416.934(g) is revised to read as follows:

**§ 416.934 Impairments which may warrant a finding of presumptive disability or presumptive blindness.**

\* \* \* \* \*

(g) Allegation of Down syndrome; and

\* \* \* \* \*

[FR Doc. 02-32217 Filed 12-20-02; 8:45 am]

BILLING CODE 4191-02-P

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[REG-124069-02]

RIN 1545-BA77

**Section 6038—Returns Required With Respect to Controlled Foreign Partnerships**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

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

**SUMMARY:** In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing a temporary regulation relating to controlled foreign partnerships. That document requires that the United States partner must follow the filing requirements that are specified in the instructions for Form 8865. The text of that regulation also serves as the text of this proposed regulation. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by March 24, 2003. Outlines of topics to be discussed at the

public hearing scheduled for March 12, 2003, at 10 a.m., must be received by February 19, 2003.

**ADDRESSES:** Send submissions to: CC:ITA:RU (REG-124069-02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:ITA:RU (REG-124069-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS internet site at <http://www.irs.gov/regs>. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Tasheaya Warren, (202) 622-3860; concerning submissions and the hearing LaNita Van Dyke, (202) 622-7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information should be received by February 21, 2003. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this regulation is in § 1.6038-3T. This information is required by the IRS to identify foreign partnerships which are controlled by United States persons and verify amounts reported by the partners. The collection of information is mandatory. The likely respondents will be individuals and business or other for-profit organizations.

The burden of complying with the collection of information required to be reported on Form 8865 is reflected in the burden for Form 8865. The estimated number of respondents is 5000. The estimated burden for the 2001 Form 8865 per respondent is 89 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### Background and Explanation of Provisions

The temporary regulation in the Rules and Regulations section of this issue of the **Federal Register** amends 26 CFR part 1. If a foreign partnership files Form 1065 or Form 1065-B and a United States partner is required to file Form 8865 with respect to that partnership, the temporary regulation amends Treas. Reg. § 1.6038-3 to provide that the United States partner must follow the filing requirements that are specified in the instructions for Form 8865. The text of the temporary regulation also serves as the text of this proposed regulation. The preamble to the temporary regulation explains the temporary regulation and this proposed regulation.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because this regulation does not impose a collection of information on small entities, a

Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

### Comments and Public Hearing

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

A public hearing has been scheduled for March 12, 2003, at 10 a.m., in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** portion of this preamble. The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit written or electronic comments by March 24, 2003 and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by February 19, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

### Drafting Information

The principal author of this regulation is Tasheaya Warren, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Proposed Amendments to the Regulations

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

## PART 1—INCOME TAXES

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

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

**Par. 2.** Section 1.6038-3 is amended by revising paragraph (j) to read as follows:

### § 1.6038-3 Information returns required of certain United States persons with respect to controlled foreign partnerships (CFPs).

\* \* \* \* \*

(j) [The text of the proposed amendment to § 1.6038-3(j) is the same as the text for § 1.6038-3T(j) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

[FR Doc. 02-32151 Filed 12-20-02; 8:45 am]

**BILLING CODE 4830-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 141

[FRL-7428-2]

### Minor Clarification of National Primary Drinking Water Regulation for Arsenic

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** Today, EPA is proposing to revise the rule text that established the 10 parts per billion arsenic drinking water standard to express the standard as 0.010 mg/L instead, in order to clarify the implementation of the original rule.

**DATES:** EPA must receive public comment on this proposed rule by January 22, 2003.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Send comments to: Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460, Attention Docket ID No. OW-2002-0057. Follow the detailed instructions as provided in section I.C. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** For general information contact the EPA Safe Drinking Water Hotline at (800) 426-4791. The Hotline operates Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. ET. For technical information contact, Richard Reding, Office of Ground Water

and Drinking Water (MC-4607M), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460, (202) 564-4656, e-mail: [Reding.Richard@epa.gov](mailto:Reding.Richard@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Who Is Regulated by This Action?*

Entities potentially regulated by this regulation are public water systems

(PWSs). All community and non-transient non-community water systems must comply with the revised arsenic drinking water standard beginning on January 23, 2006. A community water system (CWS) means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. Non-transient non-community water system

(NTNCWS) means a public water system that is not a community water system and that regularly serves at least 25 of the same persons over 6 months per year. Primacy States are required to revise their programs to adopt the new arsenic standard by January 22, 2003 (unless an extension has been granted). Categories and entities potentially regulated by this action include the following:

Category	Examples of potentially regulated entities
State, Tribal and Local Government .....	State, Tribal or local government-owned/operated water supply systems using ground water, surface water or mixed ground water and surface water.
Federal Government .....	Federally owned/operated community water supply systems using ground water, surface water or mixed ground water and surface water.
Industry .....	Privately owned/operated community water supply systems using ground water, surface water or mixed ground water and surface water.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in sections 141.11 and 141.62 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW-2002-0057. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone

number for the Water Docket is (202) 566-2426. For access to docket material, please call (202) 566-2426 to schedule an appointment.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA’s electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select “search,” then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA’s electronic public docket. EPA’s policy is that copyrighted material will not be placed in EPA’s electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B.1.

For public commenters, it is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA’s electronic public

docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA’s electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

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

*C. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked “late.” EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address,

and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

a. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in Docket ID No. OW-2002-0057. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

b. *E-mail.* Comments may be sent by electronic mail (e-mail) to [OW-Docket@epa.gov](mailto:OW-Docket@epa.gov), Attention Docket ID No. OW-2002-0057. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

c. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send an original and three copies of your comments and any enclosures to: Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania

Avenue, NW., Washington, DC, 20460, Attention Docket ID No. OW-2002-0057.

3. *By Hand Delivery or Courier.* Deliver your comments to: Water Docket, Environmental Protection Agency, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OW-2002-0057. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.B.1.

#### *D. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

#### **II. What Is EPA's Statutory Authority for This Proposal?**

SDWA section 1412(b)(12)(A) required EPA to publish a revised arsenic standard. On January 22, 2001, EPA published a final rule revising the existing arsenic drinking water standard from 50 parts per billion (ppb) to 10 ppb, with a compliance date of January 23, 2006 (66 FR 6976-7066). Under EPA's regulations at 40 CFR 142.12, States that wish to maintain primary enforcement responsibility for drinking water standards must revise their programs to adopt new or revised Federal regulations. Today's action clarifies one issue raised by stakeholders concerning the standard published in January 2001.

#### **III. What Is EPA Proposing Today?**

In the January 2001 rule that established a 10 ppb (0.01 mg/L) arsenic drinking water standard, EPA clarified at 40 CFR 141.23(i)(4) that systems must report their monitoring results to the nearest 1 ppb (0.001 mg/L).

EPA added this provision to make clear that compliance with the new standard would be measured to the nearest 0.001 mg/L, thus rounding of results to the nearest 0.01 mg/L would not be permitted. Every aspect of the final rule, and all analyses supporting the rule, are expressed in terms of the 10 ppb standard.

A number of States and other stakeholders have raised a concern that State laws adopting the Federal law as written may allow rounding of such a standard so that the effective standard (in consideration of rounding of results) would be 0.014 mg/L (or 14 ppb), not 0.010 mg/L. Stakeholders attending the arsenic rule implementation workshops also identified this rounding issue. EPA considers such rounding to be inconsistent with the intent of the rule. In response, States and other stakeholders have suggested that the rule text be revised to clarify the rounding issue and avoid the potential for confusion about how to evaluate compliance results that are greater than 10 ppb.

Today, EPA is proposing to amend the rule text so that the new arsenic standard is expressed as 0.010 mg/L instead of 0.01 mg/L. While EPA firmly believes that the existing rule, in light of the clarity of the supporting discussion and documents and the addition of new 40 CFR 141.23(i)(4), already establishes 10 ppb and not 14 ppb as the new standard, EPA nonetheless believes a clarifying amendment is appropriate for two reasons. First, it is important to be responsive to State officials and other stakeholders who want to implement the regulations as intended but believe they need additional rule text to avoid confusion as they move to adopt the Federal arsenic standard. In this regard, the Agency does not want the technical way that the arsenic MCL is expressed in the regulations to be an obstacle for State adoption or to cause unnecessary transaction costs for State regulators, utility owners and operators, and other stakeholders who will help implement the new arsenic standard. Second, it is critical that public water systems evaluate, choose, and install the technology necessary to comply with the new arsenic standard as soon as possible. Hence, EPA wants to eliminate any remaining confusion or uncertainty over what the new enforceable standard for arsenic is. Readers should note that regardless of whether EPA finalizes this rule, EPA believes the 10 ppb standard has already been established by the existing rule.

#### IV. What Issue Is Open for Public Comment?

Today, EPA is requesting comment on a proposed rule change that would revise the rule text so that the 10 ppb standard is expressed as 0.010 mg/L instead of 0.01 mg/L. EPA requests comment on whether this change is appropriate in order to address the previously described stakeholder concerns. Readers should please note that EPA is not requesting comment on any other issue associated with the arsenic standard or its implementation, and EPA will not respond to any comments other than those concerning the revision of the rule text to express the MCL as 0.010 mg/L.

EPA firmly believes that extensive and exhaustive public debate has already taken place on all issues of public interest and concern. As a result, EPA will not respond to any other comments relating to the 10 ppb arsenic standard; nor will EPA respond to any issues concerning the record supporting that standard, the underlying rationale for that standard, or new information suggesting revisions to that standard. However, EPA noted in the April 17, 2002 (67 FR 19037) announcement of the results of EPA's review of existing drinking water standards, that EPA will continue to evaluate the expert analysis, the voluminous public comment received after publication of the final rule, and other relevant information on the arsenic drinking water standard, as part of the next six-year review of drinking water standards, which is to be completed in August of 2008.

#### V. Administrative Requirements

##### 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.

It has been determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

##### B. Paperwork Reduction Act

This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.* This proposed rule merely clarifies the way the 10 ppb MCL for arsenic is expressed in regulatory text.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

##### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small government jurisdictions.

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, "which are appropriate to the activities of the agency" after proposing

the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. sections 601(3)—(5). In addition to the above, to establish an alternative small business definition, agencies must consult with the Small Business Administration's (SBA's) Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's proposed rule on small entities, EPA considered small entities to be public water systems serving 10,000 or fewer persons. This is the cut-off level specified by Congress in the 1996 Amendments to the Safe Drinking Water Act for small system flexibility provisions. In accordance with the RFA requirements, EPA proposed using this alternative definition in the **Federal Register**, (63 FR 7620, February 13, 1998), requested public comment, consulted with the Small Business Administration (SBA), and expressed its intention to use the alternative definition for regulatory flexibility assessments under the RFA for all future drinking water regulations in the Consumer Confidence Reports regulation (63 FR 44511, August 19, 1998). As stated in that final rule, the alternative definition would be applied to this proposed regulation.

This proposed rule imposes no cost on any entities over and above those imposed by the final arsenic rule, because that rule was developed, costed, and evaluated as 10 ppb. This proposed rule merely clarifies the way the 10 ppb MCL is expressed in regulatory text. Therefore, after considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

##### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome



alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. This proposed rule imposes no enforceable duty on any State, local or Tribal governments or the private sector. This proposed rule would not change the costs to State, local, or Tribal governments as estimated in the final arsenic rule, because that rule was developed, costed, and evaluated as 10 ppb, and this proposed rule merely clarifies the way the 10 ppb MCL is expressed in regulatory text. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

For the same reason, EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

#### *E. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of

power and responsibilities among the various levels of government."

This 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. There is no cost to State and local governments, and the proposed rule does not preempt State law. This proposed rule imposes no cost on any State, or local governments over and above those imposed by the final arsenic rule because that rule was developed, costed, and evaluated as 10 ppb. This proposed rule merely clarifies the way the 10 ppb MCL is expressed in regulatory text. Thus, Executive Order 13132 does not apply to this proposed rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposal from State and local officials.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, (November 9, 2000)), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. There is no cost to Tribal governments, and the proposed rule does not preempt tribal law. This proposed rule imposes no cost on any Tribal government over and above those imposed by the final arsenic rule because that rule was developed, costed and evaluated as 10 ppb. This proposed rule merely clarifies the way the 10 ppb MCL is expressed in

regulatory text. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Tribal Governments, EPA specifically solicits additional comment on this proposal from Tribal officials.

#### *G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in E.O. 12866, and because it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. This proposed rule merely clarifies the way the 10 ppb MCL is expressed in regulatory text.

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

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

#### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104-113 section 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., material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards

bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects for 40 CFR Part 141

Chemicals, Indians-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: December 17, 2002. Christine Todd Whitman, Administrator.

For the reasons set out in the preamble, title 40, chapter 1 of the Code of Federal Regulations is proposed to be amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for Part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, 300j-9, and 300j-11.

2. Section 141.23 is amended:

- a. By revising the entry for arsenic in the table in paragraph (a)(4)(i).
b. By revising footnote 15 to the table in paragraph (k)(1).

The revisions read as follows:

§ 141.23 Inorganic chemical sampling and analytical requirements.

- (a) \* \* \*
(4) \* \* \*
(i) \* \* \*

DETECTION LIMITS FOR INORGANIC CONTAMINANTS

Table with 4 columns: Contaminant, MCL (mg/l), Methodology, Detection Limit (mg/l). Row for Arsenic with various methods and limits like 0.010, 0.001, 0.0005, 0.001, 0.0014.

6 The value for arsenic is effective January 23, 2006. Until then, the MCL is 0.05 mg/L.

7 The MDL reported for EPA Method 200.9 (Atomic Absorption; Platform—Stabilized Temperature) was determined using a 2x concentration step during sample digestion. The MDL determined for samples analyzed using direct analyses (i.e., no sample digestion) will be higher. Using multiple depositions, EPA 200.9 is capable of obtaining MDL of 0.0001 mg/L.

8 Using selective ion monitoring, EPA Method 200.8 (ICP-MS) is capable of obtaining a MDL of 0.0001 mg/L.

- (k) \* \* \*
(1) \* \* \*

15 Starting January 23, 2006 analytical methods using the ICP-AES technology, may not be used because the detection limits for these methods are 0.008 mg/L or higher. This

restriction means that the two ICP-AES methods (EPA Method 200.7 and SM 3120 B) approved for use for the MCL of 0.05 mg/L may not be used for compliance determinations for the revised MCL of 0.010 mg/L. However, prior to January 23, 2006 systems may have compliance samples analyzed with these less sensitive methods.

3. Section 141.62(b) is amended by revising the entry "(16)" for arsenic in the table to read as follows:

§ 141.62 Maximum contaminant levels for inorganic contaminants.

- (b) \* \* \*

Table with 4 columns: Contaminant, MCL (mg/l). Row for (16) Arsenic with MCL 0.010.

Subpart O—[Amended]

4. Amend § 141.154 by revising paragraphs (b) introductory text and (f) to read as follows:

§ 141.154 Required additional health information.

\* \* \* \* \*

(b) Ending in the report due by July 1, 2001, a system which detects arsenic

at levels above 0.025 mg/L, but below the 0.05 mg/L, and beginning in the report due by July 1, 2002, a system that detects arsenic above 0.005 mg/L and up to and including 0.010 mg/L:

\* \* \* \* \*

(f) Beginning in the report due by July 1, 2002 and ending January 22, 2006, a community water system that detects arsenic above 0.010 mg/L and up to and

including 0.05 mg/L must include the arsenic health effects language prescribed by appendix A to subpart O of this part.

5. Amend Appendix A to Subpart O by revising the entry for arsenic under "Inorganic contaminants:" to read as follows:

**Appendix A to Subpart O—Regulated Contaminants**

Contaminant (units)	Traditional MCL in mg/L	To convert for CCR multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
Inorganic contaminants:	*	*	*	*	*	*
Arsenic .....	10.010	1000	110.	10	Erosion of natural deposits; Runoff from orchards; Runoff from glass and electronics production wastes.	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.

<sup>1</sup> These arsenic values are effective January 23, 2006. Until then, the MCL is 0.05 mg/L and there is no MCLG.

**Subpart Q—[Amended]**

6. Amend Appendix B to Subpart Q by revising entry “9. Arsenic” under “C.

Inorganic Chemicals (IOCs)”, to read as follows:

**Appendix B to Subpart Q of Part 141—Standard Health Effects Language for Public Notification**

Contaminant	MCLG <sup>1</sup> mg/L	MCL <sup>2</sup> mg/L	Standard health effects language for public notification
9. Arsenic <sup>11</sup> .....	0	0.010	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.

**Appendix B—Endnotes**

\* \* \* \* \*  
 1. MCLG—Maximum contaminant level goal.

2. MCL—Maximum contaminant level.

\* \* \* \* \*  
 11. These arsenic values are effective January 23, 2006. Until then, the MCL is 0.05 mg/L and there is no MCLG.

\* \* \* \* \*  
 [FR Doc. 02–32376 Filed 12–20–02; 8:45 am]  
 BILLING CODE 6560–50–P

**FEDERAL COMMUNICATIONS COMMISSION**

47 CFR Parts 22, 24 and 27

[WT Docket No. 02–353; FCC 02–305]

**Service Rules for Advanced Wireless Services**

AGENCY: Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document solicits comment on service rules for Advanced Wireless Services in the 1710–1755 MHz and 2110–2155 MHz bands, including provisions for application, licensing, operating and technical rules, and for competitive bidding. These frequency bands have previously been used for a variety of Government and non-Government services. Concurrently with this document, the Commission adopted another decision, published elsewhere in this **Federal Register**, allocating these frequency bands for fixed and mobile services to provide for the introduction of new advanced wireless services to the public. The Commission takes this action to eliminate barriers to and facilitate the provision of new services to the public, and to encourage optimum use of these frequencies.

**DATES:** Comments are due on or before February 7, 2003, and reply comments are due on or before March 14, 2003. Public comments on the information

collections are due on or before February 28, 2003, and comments by the Office of Management and Budget (OMB) are due on or before April 28, 2003.

**ADDRESSES:** Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for filing instructions.

**FOR FURTHER INFORMATION CONTACT:** John Spencer or Eli Johnson, Staff Attorneys, 202–418–1310. For additional information concerning the information collections contained in this document, contact Judith Boley Herman at 202–418–0214, or via the Internet at [jboley@fcc.gov](mailto:jboley@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Notice of Proposed Rulemaking (NPRM) in WT Docket No. 02–353, FCC 02–305, adopted November 7, 2002, and released November 22, 2002. The complete text of the NPRM and Initial Regulatory Flexibility Analysis is available on the Commission’s Internet site, at <http://>

[www.fcc.gov](http://www.fcc.gov). It is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., CY-B4202, Washington, DC 20554 (telephone 202-863-2893). Comments may be filed using the Commission's Electronic Comments Filing System (ECFS) or by filing paper copies.

1. In this NPRM, the Commission seeks comment on service rules for Advanced Wireless Services (AWS) in the 1710-1755 MHz and 2110-2155 MHz bands, including provisions for application, licensing, operating and technical rules, and for competitive bidding. These frequency bands have previously been used for a variety of Government and non-governmental services. Concurrently with the NPRM, the Commission is adopting a Report and Order (R&O) allocating these frequency bands for fixed and mobile services so as to provide for the introduction of new AWS to the public. The Commission, in taking these actions, emphasizes its belief that in order to best serve the public, regulatory policy should strive to eliminate barriers to and facilitate the provision of new services. The 1710-1755 MHz and 2110-2155 MHz spectrum provides a significant opportunity to achieve such service advances. The Commission hopes that the licensing and service rules proposed in the NPRM will benefit consumers by giving them the services and value that they demand, and thereby provide the new business opportunities necessary to support continued service enhancements by licensees.

2. In paragraphs 10 through 15 of the NPRM, the Commission proposes a flexible use approach to spectrum allocation in these bands and discusses its tentative approach to assigning licenses. The Commission believes that its proposal to permit flexible use would eliminate uncertainties about the outcome of the competitive bidding process and promote the Commission's goals of assigning licenses expeditiously and promoting the intensive and efficient use of this spectrum. With these goals in mind, the Commission, in the NPRM, tentatively concludes that the service rules for the 1710-1755 MHz and 2110-2155 MHz bands should permit a licensee to use this spectrum for any use permitted by the United States Table of Frequency Allocations contained in part 2 of the Commission's rules. The NPRM solicits comments on a range of issues relative to its flexible

use framework and also on the Commission's proposal to resolve mutually exclusive applications for these bands by competitive bidding.

3. The Commission, in paragraphs 16 through 25 of the NPRM, proposes to adopt a geographic area licensing scheme for the 1710-1755 MHz and 2110-2155 MHz bands, and seeks comment on appropriate geographic licensing areas for these bands and how such a licensing scheme can promote the objectives of 47 U.S.C. 309(j)(3), including promotion of economic opportunities and competition by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and minority- and women-owned applicants. The NPRM, among other things, also seeks comment on including the Gulf of Mexico in the Commission's licensing scheme for these bands. Also, while the NPRM solicits comment from the public in general on the Commission's proposals, as discussed in paragraph 25 of the NPRM, the Commission specifically seeks comment from Indian Tribal governments on the effect various geographic licensing options may have on the deployment of service to tribal lands, as well as on other issues raised in the NPRM.

4. In addition to seeking comment on the appropriate geographic licensing area or areas to be used to license spectrum in the 1710-1755 MHz and 2110-2155 MHz bands, the NPRM, as addressed in paragraphs 26 through 32, seeks comment on the amount of spectrum that should be included in each license, and the related issue of whether this spectrum should be paired.

5. The NPRM next considers licensing and operating rules. Paragraphs 36 through 38 of the NPRM proposes to allow licensees in the 1710-1755 MHz and 2110-2155 MHz bands to provide all allowable services anywhere within their licensed area at any time, consistent with their regulatory status. It also recommends that these applicants be able to request common carrier status as well as non-common carrier status for authorization in a single license, rather than to require the applicant to choose between common carrier and non-common carrier services. The NPRM further proposes that applicants and licensees in these bands be required to indicate a regulatory status based on any services they choose to provide. Lastly in this regard, the NPRM proposes that, if a licensee operating in this spectrum changes the service or services it offers, such that its regulatory status would change, that licensee must notify the Commission of the change.

6. The NPRM, in paragraphs 39 through 42, discusses ownership restrictions in the 1710-1755 MHz and 2110-2155 MHz bands. The NPRM proposes to establish parity in foreign ownership reporting requirements, but does not suggest a single, substantive standard for compliance. For example, the Commission would not deny a license to an applicant requesting authorization exclusively to provide services not enumerated in section 310(b) of the Communications Act, solely because its foreign ownership would disqualify it from receiving a license if the applicant had applied for a license to provide the services enumerated in section 310(b).

7. The NPRM further proposes not to adopt band-specific service rules addressing spectrum aggregation limits applicable to the initial licensing of the 1710-1755 MHz and 2110-2155 MHz bands, but seeks comment on whether any such limits are necessary or appropriate. In particular, the NPRM solicits comment on whether the Commission should limit the amount of spectrum in these bands that any one entity (or related entities) may acquire at auction in the same geographic area.

8. Paragraphs 43 through 45 of the NPRM discusses license term renewal expectancy, and proposes that in the 1710-1755 MHz and 2110-2155 MHz spectrum, the license term be 10 years. The NPRM further proposes that a licensee in this spectrum applying for renewal receive a preference or renewal expectancy if the applicant has provided substantial service during its past license term and has complied with the Communications Act and applicable Commission rules and policies.

9. In addition, the NPRM, in paragraphs 46 through 49, seeks comment on whether licensees in the 1710-1755 MHz and 2110-2155 MHz bands should be subject to any performance requirements, in addition to a substantial service requirement, at license renewal. The NPRM, in particular, questions whether the Commission should establish any specific coverage requirements in this spectrum, or whether coverage criteria should be adopted as one means, but not the exclusive means, of meeting a substantial service requirement. The NPRM invites comment on this and other issues related to possible performance requirements.

10. The NPRM, in paragraphs 50 and 51, asks whether the Commission should allow licensees in the 1710-1755 MHz and 2110-2155 MHz bands to partition their service areas and to disaggregate their spectrum. If so, the NPRM proposes to apply section 27.15

of the Commission's rules to this spectrum. Section 27.15, among other things, provides that licensees may apply to partition their licensed geographic service areas or disaggregate their licensed spectrum at any time following the grant of their license.

11. As indicated in paragraphs 13 and 14 and paragraph 52 of the NPRM, even though licenses in the 1710–1755 MHz and 2110–2155 MHz bands may be issued pursuant to one part of the Commission's rules, licensees in these bands may be required to comply with rules contained in other parts of the Commission's rules. The NPRM therefore solicits comment generally on any provisions in existing, service-specific rules that may require specific recognition or adjustment to comport with the supervening application of another rule part, as well as any provisions that may be necessary in this other rule part to fully describe the scope of covered services and technologies.

12. The NPRM next looks at technical rules for the 1710–1755 MHz and 2110–2155 MHz bands and the potential for interference between licensees using the same spectrum in adjacent service areas, or adjacent spectrum. Paragraphs 55 through 59 consider in-band interference control. In that regard, the Commission, in the NPRM, tentatively concludes that either a boundary limit or a coordination method, when properly applied, can provide a satisfactory means of controlling harmful interference or determining the interaction between systems, although there may be reasons to prefer one or the other for the spectrum under consideration. Commenters should provide an analysis of the advantages and disadvantages of the boundary limit and coordination approaches, or approaches that combine features of both. The NPRM, in paragraphs 61 and 62 also invites comment on ways of avoiding interference with incumbent licensees in the spectrum.

13. Paragraphs 63 and 64 of the NPRM solicit comment regarding out-of-band and spurious emission limits. The NPRM cites the need to consider interference protection for operations adjacent to the 1710–1755 MHz and 2110–2155 MHz bands and tentatively concludes that the Commission should develop out-of-band emission limits that can accommodate each type of communications.

14. Next, the NPRM, in paragraphs 65 through 67, invites comment on what limits for effective isotropic radiated power are necessary or appropriate under either a coordination or a field strength limit approach. The NPRM

requests comment on a number of connected issues such as if such limits are necessary, what should they be and the basis for the suggested limits. The NPRM also seeks comment on the extent to which the power limits that are established in this rulemaking should affect the Commission's adoption of a paired or unpaired band structure, and vice versa. If the Commission, as suggested in paragraph 66, decides to adopt a paired band architecture for this spectrum, should it also allow the use of both base and mobile transmitters in both bands. Finally, in this regard, the NPRM invites comment on the technical ramifications of potential band segmentation plans, and on techniques for dual use based on advance modulation techniques, antenna technology, or other advanced methods for channelization.

15. The NPRM, in paragraphs 68 and 69, considers radiofrequency (RF) radiation safety requirements and proposes to amend its rules to provide a 1,000 watts effective radiated power threshold for fixed operations in the 1710–1755 MHz and 2110–2155 MHz bands.

16. In paragraph 70 of the NPRM, the Commission requests comment on applying existing rules related to equipment authorization, frequency stability, antenna structures and air navigation, environmental requirements, quiet zones, and disturbance of AM broadcast antenna patterns to licensees in the 1710–1755 MHz and 2110–2155 MHz bands, including licensees who acquire their licenses through partitioning or disaggregation. Further, the NPRM proposes, in paragraph 71, that until agreements between the United States, Mexico, and Canada become effective, to apply, as an interim requirement, for terrestrial licensees operating in the 1710–1755 MHz and the 2110–2155 MHz bands along the borders of the United States, Mexico, and Canada, the same technical restrictions at the border that the Commission adopts for operations between geographic service areas, to the extent they are not in violation of current bilateral agreements and arrangements.

17. Finally, paragraphs 72 through 80 discuss competitive bidding issues. For example, the NPRM proposes to conduct the auction of initial licenses in the 1710–1755 MHz and 2110–2155 MHz bands in conformity with the general competitive bidding rules set forth in part 1, subpart Q of the Commission's rules, and substantially consistent with the bidding procedures that have been employed in previous auctions. Thus, the NPRM solicits

comment on whether any of the Commission's part 1 rules or other auction procedures would be inappropriate or should be modified for an auction of licenses in these bands.

18. In paragraphs 74 through 80, the NPRM proposes to adopt a small business size standard which defines a small business as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a very small business as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. The NPRM also proposes to provide small businesses with a bidding credit of 15 percent, and very small businesses with a bidding credit of 25 percent. The Commission seeks comment on these size standards and on whether the proposed small business provisions are sufficient to promote participation by businesses owned by minorities and women, as well as rural telephone companies. To the extent that commenters propose additional provisions to ensure participation by minority-owned or women-owned businesses, they should address how such provisions should be crafted to meet the relevant standards of judicial review.

## Administrative Matters

### *Ex Parte Rules*

19. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules. (See generally 47 CFR 1.1202, 1.1203, 1.1206.)

### *Comment Information*

20. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on this NPRM on or before February 7, 2003, and reply comments on or before March 14, 2003. Comments and reply comments should be filed in WT Docket No. 02–353, and may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

21. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by e-mail via the

Internet. To obtain filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message: "get form <your e-mail address>." A sample form and directions will be sent in reply.

22. Parties who choose to file by paper must file an original and four copies of each filing. If parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW-A325, Washington, DC 20554. Furthermore, parties are requested to provide courtesy copies for the following Commission staff: (1) John Spencer and Eli Johnson, Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room. 3-C124, Washington, DC 20554; and (2) Gary Michaels and Andrea Kelly, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room. 4-A760, Washington, DC 20554. One copy of each filing (together with a diskette copy, as indicated below) should also be sent to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., CY-B4202, Washington, DC 20554.

23. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be attached to the original paper filing submitted to the Office of the Secretary. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft™ Word 97 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters should send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., CY-B4202, Washington, DC 20554.

24. The public may view the documents filed in this proceeding during regular business hours in the

FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., Room CY-A257, Washington, DC 20554, and on the Commission's Internet Home Page: <<http://www.fcc.gov>>. Copies of comments and reply comments are also available through the Commission's duplicating contractor: Qualex International, Portals II, 445 12th Street, SW., CY-B4202, Washington, DC 20554 (telephone 202-863-2893). Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418-7426, TTY (202) 418-7365, or at [bmillin@fcc.gov](mailto:bmillin@fcc.gov).

#### *Paperwork Reduction Act*

25. This NPRM may contain proposed information collections. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

26. Written comments by the public and agencies on the proposed information collections are due February 14, 2003. Written comments by the OMB on the proposed and/or modified information collections are due on or before April 21, 2003. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith Boley Herman, Federal Communications Commission, 445 12th Street, SW., Room 1-C804, Washington, DC 20554, or via the Internet to [jboley@fcc.gov](mailto:jboley@fcc.gov), and to Kim A. Johnson, Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Docket Library, Room 10236, New Executive Office Building (NEOB), 725 17th Street, NW., Washington, DC 20503 or via the Internet at

[Kim\\_A.Johnson@omb.eop.gov](mailto:Kim_A.Johnson@omb.eop.gov).

OMB Approval Number: 3060-XXXX.

*Title:* Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands.

*Form No.:* FCC Forms 601, 602, 603, 604, 605.

*Type of Review:* New collection.

*Respondents:* Business or other for profit, federal government, state, local or tribal government.

*Number of Respondents:* 200.

*Estimated Time Per Response:* 30 minutes to 10 hours (The reporting and coordination are all one time or occasional burdens that will only occur under certain conditions.)

*Frequency of Response:* On occasion and one-time reporting requirements, third party disclosure requirement, recordkeeping requirement.

*Total Annual Cost Burden:* N/A.

*Total Annual Burden:* 830 hours (approximate total for three year term of OMB approval).

*Needs and Uses:* The various information reporting and verification requirements, and the prospective coordination requirement, if ultimately adopted, will be used by the Commission to verify licensee compliance with Commission rules and regulations, and to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934. Such information has been used in the past and will continue to be used to minimize interference, verify that applicants are legally and technically qualified to hold licenses, and to determine compliance with Commission Rules.

#### *Initial Regulatory Flexibility Act Analysis*

27. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). This is a summary of that IRFA. The complete text of the IRFA may be found in Appendix B of the full NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments provided in paragraph 87 of the full text of the NPRM. The Commission will send a copy of the NPRM, including the full text of the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

### A. Need for, and Objectives of, the Proposed Rules

28. The NPRM seeks comment on service rules for Advanced Wireless Services (AWS) in the 1710–1755 MHz and 2110–2155 MHz bands, including provisions for application, licensing, technical and operating rules, and for competitive bidding. These frequency bands have previously been used for a variety of Government and non-government services. The Commission's goal in proposing the licensing and service rules detailed in the NPRM is to enable service providers to put this spectrum to its highest value use with minimal transaction costs. The Commission's proposals for service rules allow for flexibility and permit this spectrum to be used for any purpose consistent with its allocation, including third generation (3G) and other advanced wireless services.

### B. Legal Basis

29. The proposed action is authorized pursuant to sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332 and 333 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333.

### C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

30. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small government jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Nationwide, there are 4.44 million small business firms, according to SBA reporting data.

31. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. Last, the definition of "small governmental jurisdiction" is one with populations of fewer than 50,000. There are 85,006 governmental jurisdictions in the nation. This number

includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number have populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, we estimate that ninety-six percent, or about 81,600, are small entities that may be affected by our rules.

32. The proposals in the NPRM affect applicants who wish to provide service in the 1710–1755 MHz and 2110–2155 MHz bands. The Commission does not know precisely the type of service that a licensee in these bands might seek to provide. Nonetheless, the Commission anticipates that the services that will be deployed in these bands may have capital requirements comparable to those in the broadband Personal Communications Service (PCS), and that the licensees in these bands will be presented with issues and costs similar to those presented to broadband PCS licensees. Therefore, the NPRM proposes to adopt the same small business size standards here that the Commission adopted for the broadband PCS service. In particular, the NPRM proposes to define a "small business" as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a "very small business" as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. The NPRM also proposes to provide small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent. The NPRM seeks comment on the use of these business size standards and also on the associated bidding credits for small business applicants to be licensed in the 1710–1755 MHz and 2110–2155 MHz bands, with particular focus on the appropriate definitions of small and very small businesses as they relate to the size of the geographic area to be covered and the spectrum allocated to each licensee.

33. The Commission has not yet determined how many licenses will be awarded in the 1710–1755 MHz and 2110–2155 MHz bands. Moreover, the Commission does not yet know how many applicants or licensees in these bands will be small entities. Thus, the Commission assumes, for purposes of this IRFA, that all prospective licensees are small entities as that term is defined by the SBA or by our proposed small

business definitions for these bands. The Commission invites comment on this analysis.

34. Although the Commission does not know for certain which entities are likely to apply for these frequencies, we note that the 1710–1755 MHz and 2110–2155 MHz bands are comparable to cellular service and personal communications service.

35. Wireless Telephone Including Cellular, Personal Communications Service (PCS) and SMR Telephony Carriers. The Commission's most recent data, as reported in Table 5.3 of *Trends in Telephone Service*, estimates that there are 858 wireless telephone carriers and that 291 of these carriers in combination with their affiliates have 1,500 or fewer employees. In addition, the SBA has developed size standards for wireless small businesses within the two separate Economic Census categories of: (1) Paging and (2) Cellular and Other Wireless Telecommunications. For both of those categories, the SBA considers a business to be small if it has 1,500 or fewer employees. According to the Commission's most recent *Trends in Telephone Service* data, 1,761 companies reported that they were engaged in the provision of wireless service. Of these 1,761 companies, an estimated 1,175 have 1,500 or fewer employees and 586 have more than 1,500 employees. Consequently, the Commission estimates that most wireless service providers are small entities.

### D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

36. The NPRM proposes a number of rule changes that will affect reporting, recordkeeping and other compliance requirements. The Commission will provide time for public comment on and seek Office of Management and Budget approval for any proposals that entail Paperwork Reduction Act burdens.

37. The NPRM first proposes flexible use of the bands under the regulatory framework contained in part 27 of the Commission's rules, or alternatively seeks comment on governing the services in these bands by the part 24 or part 22 rules, or by a newly created rule part. (Paragraphs 13–14 of the NPRM.) Also, as discussed in paragraphs 16–18, the NPRM proposes a geographic area licensing scheme for the 1710–1755 MHz and 2110–2155 MHz bands. The transfer of the 1710–1755 MHz band from Federal Government use to non-Government commercial use is subject to the provisions of the National Telecommunications and Information

Administration Organization Act, as amended by the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (NDAA-99). NDAA-99 requires new non-Governmental licensees to reimburse Federal users for their relocation costs. (Paragraphs 33-34 of the NPRM.) NDAA-99 also grants the Federal user a limited reclamation right.

38. Entities interested in acquiring initial licenses to use spectrum in the 1710-1755 MHz and 2110-2155 MHz bands will be required to file using the Universal Licensing System, as discussed in paragraph 52 of the NPRM. As in other services, the licensees in these bands would be allowed to provide all allowable services anywhere within their licensed area. The Commission's current mobile service license application requires an applicant for mobile services to indicate whether the service it intends to offer will be Commercial Mobile Radio Service (CMRS), Private Mobile Radio Service (PMRS), or both, since service offerings may bear on eligibility and other statutory and regulatory requirements. The NPRM also proposes to permit applicants to request common carrier status as well as non-common carrier status for authorization in a single license, rather than to require the applicant to choose between common carrier and non-common services. These proposed regulatory status obligations are discussed at paragraphs 36-38 of the NPRM.

39. Also, as stated in paragraph 39 of the NPRM, sections 310(a) and 310(b) of the Communications Act, as modified by the Telecommunications Act of 1996, impose foreign ownership and citizenship requirements that restrict the issuance of licenses to certain applicants. An applicant requesting authorization for other than broadcast, common carrier, or aeronautical en route or fixed services would be subject to section 310(a), but not to the additional prohibitions of section 310(b). An applicant requesting authorization for these particular services would be subject to both sections 310(a) and 310(b). The NPRM provides, however, that common carriers and non-common carriers filing an application should not be subject to varied reporting obligations. The NPRM does not propose a single, substantive standard for compliance. For example, the NPRM states that the Commission would not deny a license to an applicant requesting authorization exclusively to provide services not enumerated in section 310(b), solely because its foreign ownership would disqualify it from receiving a license if the applicant had applied for a license

to provide the services enumerated in section 310(b).

40. In paragraphs 46-49 of the NPRM, the Commission seeks comment on whether licensees in the 1710-1755 MHz and 2110-2155 MHz bands should be subject to any performance requirements in addition to a substantial service requirement at license renewal. The NPRM notes that in some services the Commission has imposed minimum coverage requirements on licensees to ensure that spectrum is used effectively and service is implemented promptly. The NPRM seeks comment on whether the Commission should establish any specific coverage requirements in the 1710-1755 MHz and 2110-2155 MHz bands, or whether coverage criteria should be adopted as one means, but not the exclusive means, of meeting a substantial service requirement. The NPRM also seeks comment on whether licensees should be subject to interim performance requirements prior to the end of the license term.

41. In paragraphs 50-51 of the NPRM, the Commission seeks comment on allowing licensees in the 1710-1755 MHz and 2110-2155 MHz bands to partition their service areas and to disaggregate their spectrum. If the Commission permits partitioning, then the partitioning licensee would have to include with its request a description of the partitioned service area and a calculation of the population of the partitioned service area and the licensed geographic service area.

42. In paragraphs 54-71, the NPRM seeks comment on a number of technical issues and licensing obligations. The NPRM requests information on how best to control in-band and out-of-band interference, appropriate power limits, RF safety limits, and Canadian and Mexican coordination.

43. The Commission requests comment on how all of these requirements may be modified to reduce the burden on small entities and still meet the objectives of the proceeding.

#### **E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

44. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements

under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof for small entities.

45. The NPRM solicits comment on a number of proposals and alternatives regarding the reallocation of, and service rules for, the 1710-1755 MHz and 2110-2155 MHz bands. The NPRM seeks to adopt rules that will reduce regulatory burdens, promote innovative services and encourage flexible use of this spectrum. It opens up economic opportunities to a variety of spectrum users, including small businesses. The Commission considers various proposals and alternatives partly because we seek to minimize, to the extent possible, the economic impact on small businesses.

46. Paragraph 74 of the NPRM takes particular note of the Commission's legislative obligation to promote "economic opportunity and competition by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women." In recognition of this obligation and as discussed above, the NPRM first proposes to establish size standards for small and very small businesses based on the definitions used for the broadband PCS service. The NPRM also proposes to provide small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent.

47. As indicated in paragraph 79 of the NPRM, the Commission believes that the small business size standards and corresponding bidding credits proposed in the NPRM would provide a variety of businesses with opportunities to participate in the auction of licenses for these bands, and afford licensees substantial flexibility for the provision of services with varying capital costs. However, the Commission recognizes that the capital costs of operational facilities in the 1710-1755 MHz and 2110-2155 MHz bands may vary widely. Thus, the NPRM particularly seeks comment on whether there may be any distinctive characteristics to the AWS service or these bands that suggest that the adoption of small business size definitions and the use of bidding credits would be inappropriate in this instance. Further, in paragraph 80, the Commission seeks comment on whether the small business provisions proposed in the NPRM are sufficient to promote participation by businesses owned by minorities and women, as well as rural telephone companies and small entities.



48. The NPRM invites comment on various alternative licensing and service rules and on a number of issues relating to how the Commission should craft service rules for this spectrum, that could have an impact on small entities. For example, the Commission seeks comment on the size of spectrum blocks for these frequencies and how the size of spectrum blocks would impact small entities. (Paragraphs 26–32 of the NPRM.) The NPRM also proposes a geographic area approach to service areas, as opposed to a station-defined licensing approach, and seeks comment on the appropriate size of service areas. Specifically, the NPRM asks for comment on whether smaller geographic areas would better serve the needs of small entities. As explained in paragraph 20 of the NPRM, the Commission's approach to determining optimum geographic area license size(s) attempts to accommodate the likely range of applicant desires by balancing efficiency with the policy goal of disseminating licenses among a wide variety of applicants. The NPRM notes that the Commission wishes to foster service to rural areas and tribal lands, and to promote investment in and rapid deployment of new technologies and services. The NPRM also notes that small license areas may favor smaller entities with regional business plans and no interest in providing large-area service. In summary, the NPRM seeks comment on the advantages and disadvantages to small entities of a large geographic licensing scheme over a small one in terms of impact on rural and small entities. (Paragraphs 19–25 of the NPRM.)

49. The NPRM seeks comment on permitting geographic partitioning and spectrum disaggregation. The NPRM notes that geographic partitioning and spectrum disaggregation is a tool utilized by the Commission to promote efficient spectrum use and economic opportunity for a wide variety of applicants, including small business, rural telephone, minority-owned, and women-owned applicants. (Paragraphs 50–51 of the NPRM.) The NPRM seeks comment on the benefits and costs of partitioning and disaggregation, and whether it promotes the public interest. Finally, the NPRM, in paragraphs 40–42, seeks comment on whether any band-specific limits on spectrum aggregation are necessary or appropriate in this case, and how this would impact the marketplace, including small entities.

50. The regulatory burdens proposed in the NPRM, such as filing applications on appropriate forms, appear necessary in order to ensure that the public

receives the benefits of innovative new services, or enhanced existing services, in a prompt and efficient manner. The Commission will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities. The Commission invites comment on any additional significant alternatives parties believe should be considered and on how the approach outlined in the NPRM will impact small entities, including small businesses and small government entities.

#### F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

51. None.

#### Ordering Clauses

52. Therefore, pursuant to sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332 and 333 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333, that this Notice of Proposed Rulemaking is adopted.

53. Additionally, notice is given of the proposed regulatory changes described in the NPRM, and that comment is sought on these proposals.

54. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 02–32213 Filed 12–20–02; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 02–3380, MB Docket No. 02–375, RM–10605]**

#### Digital Television Broadcast Service; Jackson, WY

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Two Ocean Broadcasting Company, licensee of station KJWY-TV, NTSC 2, Jackson, Wyoming, proposing the substitution of DTV channel 4 for station KJWY's assigned DTV channel 14. DTV Channel

4 can be allotted to at reference coordinates 43–20–42 N. and 110–45–10 W. with a power of 1, a height above average terrain HAAT of 300 meters.

**DATES:** Comments must be filed on or before February 3, 2003, and reply comments on or before February 18, 2003.

**ADDRESSES:** The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). See *Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: J. Dominic Monahan, Luvass, Cobb, Richard & Fraser, PC, 777 High Street, Suite 300, Eugene, Oregon 97401 (Counsel for Two Ocean Broadcasting Company).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–375, adopted December 6, 2002, and released December 13, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document

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

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.

See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

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

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

#### § 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Wyoming is amended by removing DTV channel 14 and adding DTV channel 4 at Jackson.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Division, Media Bureau.*

[FR Doc. 02-32284 Filed 12-20-02; 8:45 am]

BILLING CODE 6712-01-P

# Notices

Federal Register

Vol. 67, No. 246

Monday, December 23, 2002

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 Safety and Inspection Service

[Docket No. 02-042N]

#### Codex Alimentarius Commission: Thirty-fifth Session of the Codex Committee on Food Hygiene

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice of public meeting and request for comments.

**SUMMARY:** The Office of the Under Secretary for Food Safety, of the U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), of the Department of Health and Human Services, are sponsoring a public meeting on January 8, 2003, to present and receive comment on draft United States positions on all issues coming before the Thirty-fifth Session of the Codex Committee on Food Hygiene (CCFH), which will be held in Orlando, Florida, January 27-February 1, 2003.

**DATES:** The public meeting is scheduled for Wednesday, January 8, 2003, from 10 a.m. to 4:30 p.m.

**ADDRESSES:** The public meeting will be held in the Harvey Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD, 20740, in Conference Room 1A003. To receive copies of the documents relevant to this notice, contact the Food Safety and Inspection Service (FSIS) Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250-3700. The documents will also be accessible via the World Wide Web at the following address: <http://www.fao.org/codexalimentarius.net>. Send comments, (an original and two copies) to the FSIS Docket Clerk and reference Docket #02-042N. All comments submitted in response to this notice will be available for public inspection in the FSIS Docket

Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

#### FOR FURTHER INFORMATION CONTACT:

Syed A. Ali, International Issues Analyst, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue SW., Washington, DC 20250-3700, Telephone (202) 205-7760, Fax (202) 720-3157. Persons requiring a sign language interpreter or other special accommodations should notify Mr. Ali at the above numbers.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Codex Alimentarius Commission (Codex) was established in 1962 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. The Codex Committee on Food Hygiene was established to draft basic provisions on food hygiene for all foods. The Government of the United States hosts this Committee and will chair the Committee meeting.

##### Issues To Be Discussed at the Public Meeting

The following specific issues will be discussed during the public meeting:

1. Matters Referred by the Codex Alimentarius Commission and/or Other Codex Committees to the Food Hygiene Committee.
2. Endorsement of Hygiene Provisions in the Codex Standards and Codes of Practice:
  - Code of Practice for Fish and Fish Products at Step 8.
  - Section on Processing of Frozen Surimi at Step 5/8.
3. Draft Revised Guidelines for the Application of HACCP Systems at Step 7.
4. Consideration of the Obstacles to the Application of HACCP, Particularly in Small and Less Developed Businesses and Approaches to Overcome Them.

5. Reports of the *ad hoc* Expert Consultations on Risk Assessment of Microbiological Hazards in Food and Related Matters.

6. Discussion Paper on Risk Management Strategies for *Salmonella* spp. In Poultry.

7. Discussion Paper on Risk Management Strategies for *Vibrio* spp.

8. Risk Profile for Enterohemorrhagic *E. coli* Including the Identification of the Commodities of Concern, Including Sprouts, Ground Beef and Pork.

9. Proposed Draft Process by which the Committee on Food Hygiene Could Undertake its Work in Microbiological Risk Assessment/Risk Management.

10. Proposed Draft Principles and Guidelines for the Conduct of Microbiological Risk Management at Step 4.

11. Proposed Draft Guidelines for the Control of *Listeria monocytogenes* in Foods at Step 4.

12. Proposed Draft Code of Hygienic Practice for Milk and Milk Products at Step 4.

13. Proposed Draft Revision of the Code of Hygienic Practice for Egg Products (CAC/RCP 30-1983) at Step 4.

14. Proposed Draft Guidelines for the Validation of Food Hygiene Control Measures at Step 4.

15. Risk analysis in the Elaboration of Codex Standards and Codes.

#### Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS web page located at <http://www.fsis.usda.gov>. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that

have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720-9113. To be added to the free e-mail subscription service (Listserv), go to the "Constituent Update" page on the FSIS Web site at <http://www.fsis.usda.gov/oa/update/update.htm>. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

**F. Edward Scarbrough,**

*U.S. Manager for Codex Alimentarius.*

[FR Doc. 02-32242 Filed 12-20-02; 8:45 am]

**BILLING CODE 3410-DM-P**

**DEPARTMENT OF AGRICULTURE**

**Rural Business—Cooperative Service**

**Notice of Request for Extension of a Currently Approved Information Collection**

**AGENCY:** Rural Business—Cooperative Service, USDA.

**ACTION:** Proposed collection; comments requested.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business—Cooperative Service's intention to request an extension for a currently approved information collection in support of the Business and Industry Guaranteed Loan Program.

**DATES:** Comments on this notice must be received by February 21, 2003, to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** Rick Bonnet, Senior Commercial Loan Specialist, Business and Industry Division Processing Branch, Rural Business—Cooperative Service, U.S. Department of Agriculture, STOP 3224, 1400 Independence Avenue, SW., Washington, DC 20250-3224; Telephone: (202) 720-1804; E-mail: [rick.bonnet@usda.gov](mailto:rick.bonnet@usda.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Servicing Business and Industry Guaranteed Loans.

*OMB Number:* 0570-0016.

*Expiration Date of Approval:* April 30, 2003.

*Type of Request:* Extension of a Currently Approved Information Collection.

*Abstract:* The purpose of the program is to improve the economic and environmental climate in rural communities, including pollution abatement and control. This purpose is

achieved through bolstering the existing private credit structure through guarantee of quality loans, which will provide lasting community benefits. This subpart contains requirements applicable to Business and Industry Guaranteed Loans administered by the Agency.

Information being collected on guaranteed loans is typically collected from lenders. There are no new data collection requirements contained in the renewal notice.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average .81 hours per response.

*Respondents:* Guaranteed lenders.

*Estimated Number of Respondents:* 3,500.

*Estimated Number of Responses per Respondent:* 5.93.

*Estimated Number of Responses:* 20,740.

*Estimated Total Annual Burden on Respondents:* 16,860 hours.

Copies of this information collection can be obtained from Tracy Givelekian, Regulations and Paperwork Management Branch, at (202) 692-0039.

*Comments:* Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Rural Business—Cooperative Service (RBS), including whether the information will have practical utility; (b) the accuracy of RBS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions, used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Tracy Givelekian, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: December 11, 2002.

**John Rosso,**

*Administrator, Rural Business—Cooperative Service.*

[FR Doc. 02-32191 Filed 12-20-02; 8:45 am]

**BILLING CODE 3410-XY-P**

**DEPARTMENT OF AGRICULTURE**

**Rural Business-Cooperative Service**

**Notice of Request for Extension of a Currently Approved Information Collection**

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Proposed collection; comments requested.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS's) intention to request an extension for a currently approved information collection in support of the program for Guaranteed Loanmaking—Business and Industry Loans.

**DATES:** Comments on this notice must be received by February 21, 2003 to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** Rick Bonnet, Senior Commercial Loan Specialist, Business and Industry Division Processing Branch, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3224, 1400 Independence Avenue, SW., Washington, DC 20250-3224, Telephone (202) 720-1804, e-mail "[rick.bonnet@usda.gov](mailto:rick.bonnet@usda.gov)".

**SUPPLEMENTARY INFORMATION:**

*Title:* Guaranteed Loanmaking—Business and Industry Loans.

*OMB Number:* 0570-0017.

*Expiration Date of Approval:* April 30, 2003.

*Type of Request:* Extension of Currently Approved Information Collection.

*Abstract:* The purpose of the program is to improve the economic and environmental climate in rural communities, including pollution abatement and control. This purpose is achieved through bolstering the existing private credit structure through guarantee of quality loans, which will provide lasting community benefits. This subpart contains requirements applicable to Business and Industry Loan Program loans administered by the Agency.

Information being collected on guaranteed loans is typically collected from lenders. There are no new data collection requirements contained in the renewal notice. However, we revised several B&I forms so they could be used in two other Rural Development programs (Community Facilities and Water and Waste Disposal Guaranteed Loan Programs). The estimated burden associated with their use of these forms

have been incorporated into this package and is reflected here.

*Estimate of Burden:* Public reporting for this collection of information is estimated to average 2.4 hours per response.

*Respondents:* Business or other for-profit; State, Local or Tribal;—Lenders, accountants, attorneys.

*Estimated Number of Respondents:* 800.

*Estimated Number of Responses per Respondent:* 10.68.

*Estimated Number of Responses:* 8,544.

*Estimated Total Annual Burden on Respondents:* 20,561.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, at (202) 692-0043.

*Comments:* Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of RBS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250-0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: December 12, 2002.

**John Rosso,**

*Administrator, Rural Business-Cooperative Service.*

[FR Doc. 02-32192 Filed 12-20-02; 8:45 am]

**BILLING CODE 3410-XY-P**

## DEPARTMENT OF AGRICULTURE

### Rural Business-Cooperative Service

#### Notice of Request for Extension of a Currently Approved Information Collection

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Proposed collection; comments requested.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request an extension for a currently approved information collection in support of the program for guaranteed loanmaking.

**DATES:** Comments on this notice must be received by February 21, 2003 to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** Rick Bonnet, Senior Commercial Loan Specialist, Business and Industry Division Processing Branch, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3224, 1400 Independence Avenue, SW., Washington, DC 20250-3224, Telephone (202) 720-1804, e-mail "rick.bonnet@usda.gov".

**SUPPLEMENTARY INFORMATION:**

*Title:* Guaranteed Loanmaking—General.

*OMB Number:* 0570-0018.

*Expiration Date of Approval:* April 30, 2003.

*Type of Request:* Extension of Currently Approved Information Collection.

*Abstract:* The purpose of the program is to improve the economic and environmental climate in rural communities, including pollution abatement and control. This purpose is achieved through bolstering the existing private credit structure through guarantee of quality loans which will provide lasting community benefits. This subpart contains requirements applicable to Business and Industry Loan Program loans administered by the Agency.

Information being collected on guaranteed loans is typically collected from lenders. There is no new data collection requirements contained in the renewal notice.

*Estimate of Burden:* Public reporting for this collection of information is estimated to average 30 minutes to 12 hours per response.

*Respondents:* Business or other for-profit; State, Local or Tribal; Accounts, and Attorneys.

*Estimated Number of Respondents:* 1,037.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Number of Responses:* 1,037.

*Estimated Total Annual Burden on Respondents:* 1,494.

Copies of this information collection can be obtained from Cheryl Thompson,

Regulations and Paperwork Management Branch, at (202) 692-0043.

*Comments:* Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the RBS, including whether the information will have practical utility; (b) the accuracy of RBS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250-0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: December 12, 2002.

**John Rosso,**

*Administrator, Rural Business-Cooperative Service.*

[FR Doc. 02-32193 Filed 12-20-02; 8:45 am]

**BILLING CODE 3410-XY-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-791-810]

#### Notice of Opportunity To Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation

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

**EFFECTIVE DATE:** December 23, 2002.

**FOR FURTHER INFORMATION CONTACT:** Sally C. Gannon or Sheila Forbes at (202) 482-0162 and (202) 482-4697, respectively; AD/CVD Enforcement, Office 9, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

#### Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty

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

On December 2, 2002, the Department published in the **Federal Register** (67 FR 71533) a "Notice of Opportunity to Request Administrative Review" of such orders, findings, or suspended investigations with December anniversary dates. In publishing the December 2, 2002 "Notice of Opportunity to Request Administrative Review," the Department inadvertently omitted a reference to the countervailing duty order on Certain Hot-Rolled Carbon Steel Flat Products from South Africa C-791-810, which has a December anniversary date. Accordingly, the Department is separately publishing this notice of an opportunity for interested parties to request an administrative review of the antidumping duty order on Certain Hot-Rolled Carbon Steel Flat Products from South Africa C-791-810.

*Opportunity To Request a Review*

Not later than the last day of December 2002, interested parties may request administrative review of the following countervailing duty order on Certain Hot-Rolled Carbon Steel Flat Products from South Africa for the following period:

Countervailing duty proceeding	Period
South Africa: Certain Hot-Rolled Carbon Steel Flat Products, C-791-810 .....	1/1/01-12/31/01

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a

producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Duty Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(1)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of December 2002. If the Department does not receive, by the last day of December 2002, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

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

Dated: December 17, 2002.

**Barbara E. Tillman,**

*Acting Deputy Assistant Secretary for Import Administration, Group III.*

[FR Doc. 02-32428 Filed 12-20-02; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF EDUCATION**

**Submission for OMB Review; Comment Request**

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory 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 22, 2003.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, 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 *Karen\_F.Lee@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 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 17, 2002.

**John D. Tressler,**

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

**Office of Special Education and Rehabilitative Services**

*Type of Review:* Reinstatement.  
*Title:* Quarterly Cumulative Caseload Report.

*Frequency:* Quarterly.  
*Affected Public:* State, Local, or tribal gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 320.

Burden Hours: 320.

*Abstract:* State vocational rehabilitation (VR) agencies who administer vocational programs provide key caseload indicator data on this form, including numbers of persons who are applicants, determined eligible/ineligible, waiting for services, and also their program outcomes. This data is used for program, planning, management, budgeting and general statistical purposes.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202-4651 or directed to her e-mail address [Vivian.Reese@ed.gov](mailto:Vivian.Reese@ed.gov). Requests may also be 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 Sheila Carey at her e-mail address [Sheila.Carey@ed.gov](mailto:Sheila.Carey@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 02-32214 Filed 12-20-02; 8:45 am]  
BILLING CODE 4000-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER03-181-000]

#### California Independent System Operator Corporation; Notice of Filing

December 17, 2002.

Take notice that on November 8, 2002, California Independent System Operator Corporation (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) an informational rate filing. The informational filing sets forth the basis for the ISO's GMC rates effective as of January 1, 2003.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on

or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866)208-3676, or for TTY, contact (202)502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

*Comment Date:* December 27, 2002.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02-32202 Filed 12-20-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER03-263-000]

#### Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.; Notice of Filing

December 16, 2002.

Take notice that on December 11, 2002, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (collectively ComEd) tendered for filing with the Federal Energy Regulatory Commission (Commission) a notice of cancellation of its Open Access Transmission Tariff (OATT). On either February 1, 2003, or March 1, 2003 (the transmission service date), ComEd's OATT will be cancelled. On the transmission service date approved by the Commission, ComEd will transfer functional control of its facilities and transmission provider responsibilities to PJM Interconnection, LLC (PJM), and PJM will commence transmission service under PJM's OATT over ComEd's transmission facilities.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866)208-3676, or for TTY, contact (202)502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

*Comment Date:* January 2, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02-32203 Filed 12-20-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER03-264-000]

#### Duquesne Light Company; Notice of Filing

December 16, 2002.

Take notice that on December 12, 2002, Duquesne Light Company (DLC) filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated December 12, 2002, with electricAmerica under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds electricAmerica as a customer under the Tariff. DLC requests an effective date of December 12, 2002, for the Service Agreement.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and

214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866)208-3676, or for TTY, contact (202)502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

*Comment Date:* January 2, 2003.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 02-32204 Filed 12-20-02; 8:45 am]  
BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. EL02-112-000 and EL02-120-000]

***FirstEnergy Solutions Corp., Complainant v. PJM Interconnection, LLC, Respondent; Edison Mission Energy, Complainant v. PJM Interconnection, LLC, Respondent; Notice of Filing of Responses to Data Requests***

December 17, 2002.

Take notice that on December 11, 2002, PJM Interconnection, LLC (PJM), respondent, filed with the Federal Energy Regulatory Commission (Commission) responses to data requests propounded by the Commission by letter dated November 26, 2002, in the above-captioned dockets. Respondent states that it has served a copy of these responses on each person whose name appears on the official service list in the two above-captioned dockets.

Any person desiring to be heard or to comment on this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene, see rule 214 of the Commission's rules of practice and procedure, 18 CFR 385.214 (2002). All comments or interventions must be filed on or before December 31, 2002. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866)208-3676, or for TTY, contact (202)502-8659. The filings may be made electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

**Linwood A. Watson, Jr.,**  
*Deputy Secretary.*

[FR Doc. 02-32199 Filed 12-20-02; 8:45 am]  
BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER03-88-001]

***Liberty Electric Power, LLC; Notice of Filing***

December 17, 2002.

Take notice that on December 13, 2002, Liberty Electric Power, LLC (Liberty) tendered for filing, pursuant to section 205 of the Federal Power Act (16 U.S.C.824d), and part 35 of the Federal Energy Regulatory Commission rules of practice and procedure, an amended rate schedule for reactive power to be provided to the PJM Interconnection, LLC transmission grid. Liberty requests an effective date of January 1, 2003.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211

and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866)208-3676, or for TTY, contact (202)502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

*Comment Date:* December 27, 2002.

**Linwood A. Watson, Jr.,**  
*Deputy Secretary.*

[FR Doc. 02-32205 Filed 12-20-02; 8:45 am]  
BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP03-142-000]

***Mojave Pipeline Company; Notice of Tariff Filing***

December 16, 2002.

Take notice that on November 27, 2002, Mojave Pipeline Company (Mojave) tendered for filing as part of its FERC Gas Tariff, Second

Revised Volume No. 1, Ninth Revised Sheet No. 11; and Substitute Original Sheet No. 243, with an effective date of January 1, 2003.

Mojave states that the tariff sheets revise the fuel charge applicable to transportation service on Mojave's system and conform Sheet No. 243 to the terms of the Settlement in Docket No. RP01-172-000. The tariff sheet for the revised fuel charge is proposed to become effective January 1, 2003 and the correction to Substitute Original Sheet No. 243 is proposed to become effective February 1, 2002.



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 23, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 02-32209 Filed 12-20-02; 8:45 am]  
BILLING CODE 6717-01-P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. ER00-3591-015, ER00-1969-017, ER00-3038-008, ER02-2081-002 and EL00-70-009]

#### New York Independent System Operator, Inc.; Notice of Filing

December 16, 2002.

Take notice that on December 2, 2002, the New York Independent System Operator, Inc. (NYISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a compliance filing in accordance with the Commission's October 31, 2002, order in the above-captioned proceeding.

The NYISO states that it has served a copy of this filing upon all parties designated on the official service lists compiled by the Secretary in these proceedings.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866)208-3676, or for TTY, contact (202)502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

The Commission strongly encourages electronic filings.

*Comment Date:* December 23, 2002.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 02-32201 Filed 12-20-02; 8:45 am]  
BILLING CODE 6717-01-P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL03-30-000]

#### Tenaska Power Services Co., Complainant, v. Midwest Independent Transmission System Operator, Inc., Respondent; Notice of Complaint

December 16, 2002.

Take notice that on December 10, 2002, Tenaska Power Services Co. (Tenaska Power) tendered for filing with the Federal Energy Regulatory Commission (Commission) a complaint against Midwest Independent Transmission System Operator, Inc. (MISO) alleging MISO has violated its Tariff and Commission precedent and policy by failing to grant Tenaska Power's Long-Term firm transmission

service requests, instead affording priority to Short-Term transmission service requests.

Tenaska Power states that it served a copy of the Complaint on MISO on December 9, 2002.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before January 6, 2003. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866)208-3676, or for TTY, contact (202)502-8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 02-32200 Filed 12-20-02; 8:45 am]  
BILLING CODE 6717-01-P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EG03-28-000, et al.]

#### Enron Europe Operation (Advisor) Limited, et al.; Electric Rate and Corporate Filings

December 17, 2002.

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

### 1. Enron Europe Operation (Advisor) Limited

[Docket No. EG03-28-000]

Take notice that on December 11, 2002, Enron Europe Operation (Advisor) Limited (the Applicant), with its principal office at Four Milbank, London SW1P 3ET, United Kingdom, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant states that it is engaged directly and exclusively in the business of operating a gas-fired facility located in the Marmara Ereglisi, Turkey, with an aggregate capacity of approximately 478MW. Applicant further states that electric energy produced by the facility will be sold at wholesale or at retail exclusively to foreign consumers.

*Comment Date:* January 6, 2003.

### 2. SII Enerji ve Uretim Limited Sirketi

[Docket No. EG03-29-000]

Take notice that on December 11, 2002, SII Enerji ve Uretim Limited Sirketi (the Applicant), with its principal office at Maslak Kule, Ayazaga Mahallesi, Meydan Sokak No. 28, Maslak Istanbul, Turkey, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant states that it is engaged directly and exclusively in the business of operating a gas-fired facility located in the Marmara Ereglisi, Turkey, with an aggregate capacity of approximately 478MW. The Applicant further states that electric energy produced by the facility will be sold at wholesale or at retail exclusively to foreign consumers.

*Comment Date:* January 6, 2003.

### 3. Energy Transfer—Hanover Ventures, LP

[Docket No. EG03-30-000]

Take notice that on December 12, 2002, Energy Transfer—Hanover Ventures, LP (Applicant), 2838 Woodside Street, Dallas, Texas 75204 filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant is a limited partnership indirectly owned by Hanover Compressor Company and Energy Transfer Group, LLC. Applicant states that it owns a 23-MW natural gas fired peaking facility located near Taft,

California, which is an "eligible facility" as defined under section 32(a)(2) of the Public Utility Holding Company Act of 1935, and that the facility commenced operation in March 2002.

*Comment Date:* January 6, 2003.

### 4. Florida Power & Light Company

[Docket No. ER03-157-001]

Take notice that on December 16, 2002, Florida Power & Light Company (FPL) tendered for filing Rate Schedule FERC No. 110, the restated and revised contract for interchange service between Florida Power & Light Company and the Florida Municipal Power Agency including all associated interchange Service Schedules.

*Comment Date:* January 6, 2003.

### 5. Commonwealth Edison Company

[Docket No. ER03-253-000]

Take notice that on December 13, 2002, Commonwealth Edison Company (ComEd) tendered for filing with the Federal Energy Regulatory Commission a notice of withdrawal of its filing made on November 1, 2002, in the above-captioned proceeding. ComEd withdraws the filing of Original Service Agreement Nos. 667, 668, 669, and 670 under ComEd's FERC Electric Tariff, Second Revised Volume No. 5. The service agreements were between ComEd and NRG Power Marketing Inc. (NRG) for transmission service related to the Kendall Project in Kendall County, Illinois from January 1, 2003, through January 1, 2004.

In addition, notice is hereby given that the remaining service agreements between ComEd and NRG for transmission service related to the Kendall Project in Kendall County, Illinois for years 2004 through 2011 are terminated. The notice of withdrawal has been served on NRG Power Marketing Inc. and the Illinois Commerce Commission.

*Comment Date:* January 3, 2003.

### 6. Niagara Mohawk Power Corporation

[Docket No. ER03-260-000]

Take notice that on December 10, 2002, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing with the Federal Energy Regulatory Commission (Commission) a notice of cancellation of its Electric Rate Schedule No. 128. Niagara Mohawk states that this rate schedule was an electric transmission service agreement (Agreement) between Niagara Mohawk Power Corporation and Central Hudson Gas and Electric Corporation that dealt with Niagara Mohawk's transmission of electric energy to Central Hudson Gas

and Electric Corporation's transmission system from the New York Power Authorities' Blenheim-Gilboa pumped storage generating facility. Central Hudson Gas and Electric has advised Niagara Mohawk that it has no further need to continue this service and has requested termination of the agreement.

An effective date of June 30, 2002, is requested as it reflects the mutually agreed upon date, indicated by Central Hudson Gas and Electric to Niagara Mohawk. To the extent a waiver is necessary to obtain the requested effective date, Niagara Mohawk requests waiver of any Commission requirement that a rate schedule be filed not less than 60 days or more than 120 days from its effective date.

*Comment Date:* December 31, 2002.

### 7. U.S. Power and Gas Pennsylvania LLC

[Docket No. ER03-261-000]

Take notice that on December 11, 2002, U.S. Power and Gas LLC (USP&G) tendered for filing with the Federal Energy Regulatory Commission (Commission) a petition for acceptance of USP&G Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and waiver of certain Commission regulations.

USP&G intends to engage in wholesale electric power and energy purchases and sales as a marketer. USP&G states that it is not in the business of generating or transmitting electric power. USP&G further notes that it is a wholly-owned subsidiary of Petrocom Management Incorporated, which, through its affiliates, markets and trades natural gas, power and clean products.

*Comment Date:* January 2, 2003.

### 8. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03-265-000]

Take notice that on December 12, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing proposed revisions to the Midwest ISO Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1 to clarify charges for redirected service. Applicant requests an effective date of December 6, 2002.

The Midwest ISO seeks waiver of the Commission's regulations, 18 CFR 385.210 with respect to service on all required parties. The Midwest ISO states that it has posted this filing and its OATT is on its Internet site at [www.midwestiso.org](http://www.midwestiso.org), and that it will

provide hard copies to any interested parties upon request.

*Comment Date:* January 2, 2003.

### 9. San Diego Gas & Electric Company

[Docket No. ER03-266-000]

Take notice that on December 12, 2002, San Diego Gas & Electric Company (SDG&E) tendered for filing its application for the approval of final electric interconnection costs charged to CalPeak Power Enterprise, LLC (Enterprise) pursuant to the Interconnection Agreement (IA) between SDG&E and Enterprise, Service Agreement No. 10 to SDG&E's FERC Electric Tariff, First Revised Volume No. 6. Along with the interconnection costs, SDG&E also tendered for filing a request for a decrease in the monthly O&M rate to be charged to Enterprise for the facilities, as incorporated into First Revised Service Agreement No. 10 to SDG&E's FERC Electric Tariff, First Revised Volume No. 6.

SDG&E states that copies of the filing have been served on CalPeak Power Enterprise, LLC, and on the California Public Utilities Commission.

*Comment Date:* January 2, 2003.

### 10. San Diego Gas & Electric Company

[Docket No. ER03-267-000]

Take notice that on December 12, 2002, San Diego Gas & Electric Company (SDG&E) tendered for filing its application for the approval of final electric interconnection costs charged to CalPeak Power Border, LLC (Border) pursuant to the Interconnection Agreement (IA) between SDG&E and Border, Service Agreement No. 12 to SDG&E's FERC Electric Tariff, First Revised Volume No. 6. Along with the interconnection costs, SDG&E also tendered for filing a request for a decrease in the monthly O&M rate to be charged to Border for the facilities, as incorporated into First Revised Service Agreement No. 12 to SDG&E's FERC Electric Tariff, First Revised Volume No. 6.

SDG&E states that copies of the filing have been served on CalPeak Power Border, LLC, and on the California Public Utilities Commission.

*Comment Date:* January 2, 2003.

### 11. Public Service Company of New Mexico

[Docket No. ER03-268-000]

Take notice that on December 13, 2002, Public Service Company of New Mexico (PNM) tendered for filing a funding agreement for the design, engineering and construction services associated with the facilities necessary to interconnect the FPL Energy New

Mexico Wind, LLC (FPLE) proposed 204 MW name plate capacity wind farm generation project in eastern New Mexico to PNM's transmission system.

Copies of the filing have been sent to FPLE, the New Mexico Public Regulation Commission, and the New Mexico Attorney General.

*Comment Date:* January 3, 2003.

### 12. Handsome Lake Energy, LLC

[Docket No. ER03-269-000]

Take notice that on December 13, 2002, Handsome Lake Energy, LLC (Handsome Lake) tendered for filing, under section 205 of the Federal Power Act, proposed revisions to its Rate Schedule FERC No. 2 for reactive power and voltage control from generation sources service provided to the transmission facilities controlled by the PJM Interconnection LLC (PJM). Handsome Lake respectfully requests that the Commission accept the proposed rate schedule for filing to become effective on the first day of the month immediately following the Commission's acceptance of such rate schedule.

Handsome Lake states that it has mailed a copy of this filing to PJM.

*Comment Date:* January 3, 2003.

### 13. Thompson River Co-Gen, LLC

[Docket No. ER03-270-000]

Take notice that on December 13, 2002, Thompson River Co-Gen, LLC (Thompson) amended its petition to the Commission for acceptance of Thompson Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates, and waiver of certain Commission regulations.

Thompson intends to sell at wholesale electricity generated from a 16-megawatt cogeneration facility located in Thompson Falls, Montana, to NorthWestern Energy, LLC, (NWE). Thompson does not intend to make other wholesale sales of electricity to any entity other than NWE. Thompson is an LLC with passive ownership interests, and Barry Bates and Lawrence Underwood are the Partners and will manage Thompson's day-to-day business. Thompson has no legal or economic interest, and is not in any way related to, any utility or other entity that owns any generation, transmission or other jurisdictional facilities.

*Comment Date:* January 3, 2003.

### 14. Virginia Electric and Power Company

[Docket No. ER03-271-000]

Take notice that on December 13, 2002, Virginia Electric and Power

Company, tendered for filing revised sheets implementing changes to Virginia Electric and Power Company's contract with Virginia Municipal Electric Association No. 1, (VMEA), Rate Schedule No. 109.

Copies of the filing were served upon VMEA, the North Carolina Utilities Commission and the Virginia State Corporation Commission.

*Comment Date:* January 3, 2003.

### Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866)208-3676, or for TTY, contact (202)502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Website under the "e-Filing" link. The Commission strongly encourages electronic filings.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02-32297 Filed 12-20-02; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****Notice of Application Tendered for Filing With the Commission, and Soliciting Additional Study Requests, and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments**

December 17, 2002.

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

a. *Type of Application*: Minor original license.

b. *Project No.*: 12423-001.

c. *Date filed*: November 25, 2002.

d. *Applicant*: American Falls Reservoir District No. 2 and Big Wood Canal Company.

e. *Name of Project*: 993 Hydroelectric Project.

f. *Location*: Juncture of the 993 Lateral and North Gooding Main Canal, Boise Meridian, 20 miles northwest of the Town of Shoshone, Lincoln County, Idaho. The initial diversion is the Milner Dam on the Snake River. The North Gooding Main Canal is part of a U.S. Bureau of Reclamation (Bureau) project. The project would occupy about 10-15 acres of Federal land managed by the Bureau.

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

h. *Applicant Contact*: Lynn Harmon, General Manager, American Falls Reservoir District No. 2 and Big Wood Canal Company, Box C, Shoshone, Idaho, 83352; (208) 886-2331.

i. *FERC Contact*: Allison Arnold, (202) 502-6346 or [allison.arnold@ferc.gov](mailto:allison.arnold@ferc.gov).

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

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

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

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

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

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

m. The 993 Hydroelectric Power Project would consist of: (1) A new concrete diversion structure located across the North Gooding Main Canal with a maximum height of 10 feet; (2) a new 7,000-foot-long canal with a bottom width of 25 feet that is to be excavated from rock, with some earth embankment, having a hydraulic capacity of 350 cfs; (3) a 10-foot-high gated concrete diversion structure that will divert up to 350 cfs to a concrete intake structure; (4) a 2,900-foot-long steel pipe (or HDPE) penstock (72 inch diameter); (5) a 30 by 50-foot concrete with masonry or metal walled powerhouse containing two 750 kilowatt turbines with a total installed capacity of 1,500 Kw; (6) an enlarged 100-foot-long tailrace channel with a bottom width of 40 feet that will discharge into the North Gooding Main Canal; (7) a 2.4-mile-long transmission line, and (8) appurtenant facilities. The annual generation will be approximately 5.8 gigawatt-hours (GWh).

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available

for inspection and reproduction at the address in item h above.

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

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

Issue Acceptance or Deficiency Letter—March 2003.

Issue Scoping Document—April 2003.

Notice that application is ready for environmental analysis—July 2003.

Notice of the availability of the EA—November 2003.

Ready for Commission decision on the application—January 2004.

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

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02-32208 Filed 12-20-02; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****Notice of Alternative Dispute Resolution Workshop**

December 17, 2002.

The Commission's Dispute Resolution Service (DRS) will hold a workshop on alternative dispute resolution and how it can be used during the natural gas pipeline pre-filing process. The workshop will be held on January 9, 2003, at the Airport Marriott Hotel, 18700 John F. Kennedy Blvd., Houston, Texas 77032.

The workshop will describe ADR, how ADR has been used successfully, and when ADR may be an appropriate alternative to traditional means of resolving disputes. The DRS will present information about its activities and services. The DRS will explore with the participants to the workshop what they believe their dispute resolution needs are and help identify what steps could be taken to meet those needs. The workshop will also seek comment on what the DRS could do to help parties resolve disputes at the earliest possible time and at low cost. Richard Miles and

Deborah Osborne from the DRS and Douglas Sipe from the Office of Energy Projects will facilitate the workshop.

The Workshop will be held from 9 a.m. to 11:30 a.m. The DRS will be available during the afternoon to answer any questions or to discuss specific areas that the participants raise. To attend, please register by email to [douglas.sipe@ferc.gov](mailto:douglas.sipe@ferc.gov) or call Douglas Sipe at (202) 502-8837. For more information on the DRS, visit the FERC Web site at <http://www.ferc.gov/legal/drs/drs.htm> or contact Richard Miles at (202) 502-8702 or [richard.miles@ferc.gov](mailto:richard.miles@ferc.gov).

Additional workshops may be held in other regions of the country if industry response to the January 9th workshop is warranted. Please contact Douglas Sipe if you have any questions or comments regard these future workshops.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02-32207 Filed 12-20-02; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of FERC Staff Participation at MISO-PJM-SPP Reliability Seams Workshop

December 16, 2002.

The Federal Energy Regulatory Commission hereby gives notice that on December 18, 2002, members of its staff will attend the MISO-PJM-SPP reliability seams workshop, concerning proposed solutions to address parallel path flow issues and the coordination of congestion management processes and ATC/AFC values between the Midwest Independent Transmission System Operator, Inc. (MISO), PJM Interconnection (PJM) and Southwest Power Pool, Inc. (SPP) regions. The staff's attendance is part of the Commission's ongoing outreach efforts. The meeting is sponsored by MISO, PJM and SPP, and will be held on December 18, 2002, 10 a.m. at the Radisson Airport Hotel & Conference Center, 1375 North Cassady Avenue, Columbus, Ohio 43219.

This meeting is open to the public. The meeting may discuss matters at issue in Docket No. RM01-12-000, Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design, and in Docket No. EL02-65-000, *et al.*, Alliance Companies, *et al.*

For more information, contact Patrick Clarey, Office of Markets, Tariffs and

Rates, Federal Energy Regulatory Commission at (202) 502-8540 or [patrick.clarey@ferc.gov](mailto:patrick.clarey@ferc.gov).

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02-32206 Filed 12-20-02; 8:45 am]

**BILLING CODE 6717-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7426-1]

### Agency Information Collection Activities: Proposed Collection; Comment Request; Seven-County Study of Air Quality and Birth Defects: Computer-Assisted Telephone Questionnaire for Subset of Study Population

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB). Title: Seven-County Study of Air Quality and Birth Defects: Computer-Assisted Telephone Questionnaire for Subset of Study Population. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before February 21, 2003.

**ADDRESSES:** Public comments should be submitted to: Dr. Pauline Mendola, US EPA (MD 58A) Research Triangle Park, NC 27711.

**FOR FURTHER INFORMATION CONTACT:**

Interested persons may obtain technical information or a copy of the ICR without charge by contacting: Dr. Pauline Mendola, (919) 966-6953; FAX: (919) 966-7584; E-mail:

[mendola.pauline@epa.gov](mailto:mendola.pauline@epa.gov), or by mailing a request to the address above.

**SUPPLEMENTARY INFORMATION:**

**Affected entities:** Entities potentially affected by this action are women who delivered a live-born or stillborn infant or who experienced a recorded fetal death in seven Texas counties in 1999 already enrolled in the record-linkage component of the Seven-County Study of Air Quality and Birth Defects.

**Title:** Seven-County Study of Air Quality and Birth Defects: Computer-Assisted Telephone Questionnaire for Subset of Study Population.

**Abstract:** Previous U.S. studies examining the relationship between air pollution and adverse reproductive outcomes have not used data beyond the Environmental Protection Agency's stationary ambient monitors to estimate exposure. The proposed computer-assisted questionnaire contains a maximum of 28 questions categorized into 6 sections: Residential History, Work History, Time Spent Outside the Home (Weekdays), Time Spent Outside the Home (Weekends), Multivitamin Use, and Tobacco Use. Study participants will be the mothers of infants born with and without birth defects in 1999 in seven Texas counties. These women will be selected from a larger records-linkage-based case-control study of air pollution and birth defects in the state.

Obtaining questionnaire information on maternal residence at conception will allow us to more precisely estimate exposure during the critical window of gestational weeks three through eight. Maternal work history, outdoor activities, and time spent outside the home will be used to refine exposure estimates for outdoor air pollution. The sections on maternal vitamin use and smoking during pregnancy will provide relevant data on potential confounders of the association between air pollution and birth defects.

The study investigators will use this data to help estimate the association between air pollution exposure and risk of selected birth defects. This will be the first study in this research area to collect this type of data, and if it proves useful, will indicate a need for such supplemental data collection in future studies.

The information will appear in the form of final EPA reports, dissertation manuscripts, and journal articles, and will also be made publicly available.

The total cost of this study is estimated to be approximately \$150,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

*The EPA would like to solicit comments to:*

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

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

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

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

**Burden Statement:** The computer-assisted telephone questionnaire will be administered to mothers previously contacted via mail. Each interview will last approximately 10 minutes, including the time spent eliciting informed consent. A maximum of 1000 mothers will be invited to participate (10,000 total minutes or 167 total hours), we estimate that approximately 700 mothers will respond, resulting in a total time of 7000 minutes, or 117 hours. The data collection will be scheduled over approximately 3 months. There are no direct respondent costs for this data collection. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: December 4, 2002.

**John Vandenberg,**

*Director, Human Studies Division, National Health and Environmental Effects Research Laboratory, Office of Research and Development.*

[FR Doc. 02-32262 Filed 12-20-02; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-7426-2]

**Clean Air Act Operating Permit Program; Petition for Objection to Wyoming State Operating Permit for the Buckingham Lumber Company, Buffalo, WY**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final order on petition to object to State of Wyoming operating permit.

**SUMMARY:** This document announces that the EPA Administrator has issued an order in response to a petition to object to a state operating permit issued by the Wyoming Department of Environmental Quality (WDEQ) for the Buckingham Lumber Company's teepee burner, located in Buffalo, Wyoming. Pursuant to section 505(b)(2) of the Clean Air Act (Act), the petitioner may seek judicial review of this petition response in the United States Court of Appeals for the Tenth Circuit. Any petition must be filed within 60 days of the date this document appears in the **Federal Register**, pursuant to section 307(d) of the Act.

**ADDRESSES:** You may review copies of the final order, the petition, and other supporting information at the Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80201-2466. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. The final order is also available electronically at each of the following two addresses: [http://www.epa.gov/region7/programs/artd/air/title5/petitiondb/petitions/buckingham\\_decision2002.pdf](http://www.epa.gov/region7/programs/artd/air/title5/petitiondb/petitions/buckingham_decision2002.pdf), and <http://www.epa.gov/region7/programs/artd/air/title5/petitiondb/petitiondb2002.htm>.

**FOR FURTHER INFORMATION CONTACT:**

Christopher Ajayi, Environmental Engineer, Air and Radiation Section, Office of Partnerships and Regulatory Assistance, Mail Code 8P-AR, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, telephone (303) 312-6320, or e-mail at [ajayi.christopher@epa.gov](mailto:ajayi.christopher@epa.gov).

**SUPPLEMENTARY INFORMATION:** The Clean Air Act (Act) affords EPA a 45-day period to review and object to, as appropriate, operating permits proposed by state permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the

expiration of this review period to object to state operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to object during the comment period or that the grounds for the objection or other issue arose after this period.

The Buffalo Committee to Stop Sawmill Burning, ("Committee") submitted a petition to the Administrator on April 24, 2002, requesting that EPA object to the modified Title V operating permit issued for Buckingham Lumber Company's teepee burner in Buffalo, Wyoming. The petition objects to issuance of the proposed permit on the following grounds:

1. The permit fails to assure continuous compliance with opacity limits applicable to teepee burners under Wyoming Chapter 6, section 3(h)(i)(C)(I)(2) of the WAQSR, and 40 CFR 70.6(a)(3)(i)(B).

2. Provisions allowing emissions exceptions during "malfunction," "abnormal conditions," and "breakdown of a process, control or related operating equipment" may be inconsistent with EPA policy, and

3. Claims of "new information" about emissions at the Town of Buffalo show a need for continuous monitoring.

On November 1, 2002, the Administrator issued an order partially granting and partially denying the petition. First, the Administrator granted the petition insofar as it claimed that the Buckingham Lumber Company permit does not provide for adequate opacity monitoring. Therefore, the State of Wyoming is ordered to modify the permit to include monitoring of emissions opacity that is "sufficient to yield reliable data \* \* \* that are representative of the source's compliance with the permit."

Second, the Administrator's order denied the petitioner's claims that permit provisions allowing emissions exceptions during "malfunction," "abnormal conditions," and "breakdown of a process, control or related operating equipment" may be inconsistent with EPA policy. These emissions exception provisions of the permit mirror those promulgated in the State of Wyoming's State Operating Plan ("SIP"); therefore, this claim in the petition is denied. However, since the permitting process under Title V of the Clean Air Act does not allow the Administrator to object to permit provisions that are part of the Wyoming

SIP, the order requires EPA Region 8 to review the SIP itself to determine whether emissions exception provisions are contrary to EPA policy.

Finally, the Administrator's order denies the petition's claim that "new information" about smoke filling the town of Buffalo, Wyoming, and the source's compliance history show a need for continuous monitoring. The petitioner's request is denied because the issue of monitoring has been adequately addressed above, and petitioners failed to demonstrate that any applicable requirement is missing from the permit or that the permit otherwise fails to comply with the requirements of the regulation.

Additional explanation for the Administrator's decision can be found in the order.

**Patricia D. Hull,**

*Acting Regional Administrator, Region 8.*  
[FR Doc. 02-32261 Filed 12-20-02; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-2002-0342; FRL-7284-5]

### Imazamox; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket ID number OPP-2002-0342, must be received on or before January 22, 2003.

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

**FOR FURTHER INFORMATION CONTACT:** Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-3194; e-mail address: [brothers.shaja@epa.gov](mailto:brothers.shaja@epa.gov).

## SUPPLEMENTARY INFORMATION:

### I. General Information

#### A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP-2002-0342. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA

Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

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

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical

objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

### C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP-2002-0342. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to [opp-docket@epa.gov](mailto:opp-docket@epa.gov), Attention: Docket ID Number OPP-2002-0342. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID Number OPP-2002-0342.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP-2002-0342. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

### D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does

not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

### E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

### List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.



Dated: December 12, 2002.

**Peter Caulkins,**

Acting Director, Registration Division, Office of Pesticide Programs.

#### Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDC section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

#### Interregional Research Project Number 4 and BASF Corporation

PP 2E6472

EPA has received a pesticide petition (2E6472) from Interregional Research Project Number 4 (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902-3390 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180. Subpart D by establishing an exemption from the requirement of a tolerance for imazamox, (-)-2-(4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl)-5-(methoxymethyl)-3-pyridinecarboxylic acid in or on all raw and processed agricultural commodities. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition. This notice includes a summary of the petition prepared by BASF Corporation, Research Triangle Park, 27709.

#### A. Residue Chemistry

1. *Plant metabolism.* EPA has concluded that the nature of the residue is adequately understood and the residues of concern are the parent imazamox only.

2. *Analytical method.* Since imazamox and its metabolic degradates are not of toxicological concern, analytical methods are not applicable.

3. *Magnitude of residues.* Since imazamox and its metabolic degradates are not of toxicological concern, and this petition is a request for an exemption from a tolerance, the magnitude of residues is not applicable.

#### B. Toxicological Profile

1. *Acute toxicity.* Imazamox technical is considered to be nontoxic (toxicity category IV) to the rat by the oral route of exposure. In the acute oral toxicity study in rats, the lethal dose LD<sub>50</sub> value of imazamox technical was greater than 5,000 milligram/kilogram body weight (mg/kg bwt) for males and females. The results from the acute dermal toxicity study in rabbits indicate that imazamox is slightly toxic (toxicity category III) to rabbits by the dermal exposure. The dermal LD<sub>50</sub> value of imazamox technical was greater than 4,000 mg/kg bwt for both male and female rabbits. Imazamox technical is considered to be nontoxic (toxicity category IV) to the rat by the respiratory route of exposure. The 4-hour lethal concentration LC<sub>50</sub> value was greater than 6.3 milligrams/Liter (mg/L) (analytical) for both males and females. Imazamox technical was shown to be non-irritating to slightly irritating to rabbit skin (toxicity category IV). Based on the results of a dermal sensitization study (Buehler), imazamox technical is not considered a sensitizer in guinea pigs.

2. *Genotoxicity.* Imazamox technical was tested in the following four assays measuring several different endpoints of potential genotoxicity. Collective results from these studies indicate that imazamox does not pose a mutagenic or genotoxic risk.

i. Bacterial mutagenicity assay - negative.

ii. *In vitro* structural chromosomal aberration assay - negative.

iii. *In vitro* chinese hamster ovary/hypoxanthine guanine phosphoribosyl transferase (CHO/HGPRT) assay - negative.

iv. *In vivo* micronucleus aberration assay - negative.

3. *Reproductive and developmental toxicity.* The development toxicity study in rats conducted with imazamox technical showed no evidence of teratogenic effects in fetuses and no evidence of developmental toxicity. Thus, imazamox is neither a developmental toxicant nor a teratogen in the rat. The results from this study supported a no observed adverse effect level (NOAEL) for developmental toxicity of 1,000 mg/kg bwt/day, the highest dose tested (HDT) and limit dose. The NOAEL for maternal toxicity was 500 mg/kg bwt/day, based on reduced mean body weights, weight gains and food consumption at 1,000 mg/kg bwt/day. Results from a developmental toxicity study in rabbits conducted with imazamox technical also indicated no evidence of teratogenicity or developmental toxicity.

Thus, imazamox technical is neither a developmental toxicant nor a teratogen in the rabbit. In the rabbit developmental toxicity study, the NOAEL for maternal toxicity was 300 mg/kg bwt/day, based on decreased food consumption at 600 mg/kg bwt/day, the next HDT. The NOAEL for developmental toxicity was 900 mg/kg bwt/day, the HDT. The results from the 2-generation reproduction toxicity study in rats with imazamox technical support a NOAEL for parental and reproductive toxicity of 20,000 parts per million (ppm) (or approximately 1,639 mg/kg bwt/day, calculated from the food consumption data), the highest concentration tested (HCT). The NOAEL for growth and development of offspring is also 20,000 ppm (or approximately 1,639 mg/kg bwt/day).

Results from the reproduction study and the developmental toxicity studies conducted with imazamox technical show no increased sensitivity to developing offspring as compared to parental animals, because the NOAELs for growth and development of offspring were equal to or greater than the NOAELs for parental or maternal toxicity.

4. *Subchronic toxicity.* No treatment-related adverse effects were noted in subchronic toxicity studies at the HDT. A short-term (28-day) dermal study in rabbits was conducted with imazamox technical. No dermal irritation or systemic toxicity was observed at dose levels up to and including 1,000 mg/kg bwt/day HDT, supporting a NOAEL of 1,000 mg/kg bwt/day. In a subchronic (13-week) dietary toxicity study in rats with imazamox technical, no signs of systemic toxicity were noted, supporting a NOAEL of 20,000 ppm (or approximately 1,661 mg/kg bwt/day, calculated from food consumption data), the HCT. In a subchronic (90-day) dietary toxicity study in dogs with imazamox technical, no signs of systemic toxicity were noted, supporting a NOAEL of 40,000 ppm (or approximately 1,368 mg/kg bwt/day, calculated from the food consumption data), the HCT.

5. *Chronic toxicity.* The low order of mammalian toxicity of imazamox technical is also evident from the chronic dietary toxicity studies. These studies showed no increased mortalities or clinical signs of toxicity attributed to imazamox treatment. Moreover, there were no treatment-related effects on food consumption, body weights, organ weights, or hematology, clinical chemistry, urinalysis or ophthalmologic parameters. There was no gross or microscopic evidence of treatment-related lesions or carcinogenicity in the

three chronic studies conducted in dogs, mice or rats. A 1-year dietary study was conducted with imazamox technical in dogs at dietary concentrations of 0, 1,000, 10,000, and 40,000 ppm. The NOAEL for this study was 40,000 ppm (or approximately 1,165 mg/kg bwt/day, based on food consumption), the HCT.

A chronic feeding/carcinogenicity study was conducted with imazamox technical in male and female rats at dietary concentrations of 0, 1,000, 10,000, and 20,000 ppm. The NOAEL for systemic toxicity and carcinogenicity was 20,000 ppm (or approximately 1,167 mg/kg bwt/day, based on food consumption) the HCT. A chronic feeding/ carcinogenicity study was conducted with imazamox technical in male and female mice at dietary concentration of 500, 3,500, and 7,000 ppm. The NOAEL for systemic toxicity and carcinogenicity was 7,000 ppm (or approximately 1,201 mg/kg bwt/day, based on food consumption), the HCT.

6. *Animal metabolism.* The qualitative nature of the residues of imazamox and its metabolites CL 263284 and CL 263284's carboxylate AC 312622 in animals is adequately understood. Based on metabolism studies with goats, hens and rats, there is no reasonable expectation that measurable imazamox-related residues will occur in meat, milk, poultry or eggs from the proposed use.

7. *Metabolite toxicology.* No toxicologically significant metabolites were detected in plant or animal metabolism studies for soybeans or the rest of the crops in the legume vegetable crop grouping (6) or canola. Therefore, no metabolites need to be regulated in these crops. The plant metabolism study in wheat indicated very low residues of concern. A very small amount of the metabolite CL 263284 was found in the wheat grain. The plant metabolism in alfalfa indicated very low residues in the alfalfa seed. However, the parent imazamox underwent metabolism to the metabolite CL 263284 (the same metabolite seen in wheat). This metabolite was captured by a glucose molecule to form the glucose conjugate CL 189215 and the hydroxymethyl AC 263284 was also further oxidized to the carboxylate metabolite CL 312622. Both metabolites, CL 263284 and CL 312622 were present in the rat metabolism study. No additional toxicologically significant metabolites were detected in any plant or animal studies.

8. *Endocrine disruption.* Collective organ weight data and histopathological findings from the 2-generation rat reproductive study, as well as from the sub-chronic and chronic toxicity studies conducted in two or more animal

species, demonstrate no apparent estrogenic effects or effects on the endocrine system. There is no information available that suggests that imazamox would be associated with endocrine effects.

#### C. Aggregate Exposure

1. *Dietary exposure—i. Food.* Residues of imazamox and its metabolic degradates are not of toxicological concern. Therefore, dietary exposure through he food is not a concern.

ii. *Drinking water.* Residues of imazamox and its metabolic degradates are not of toxicological concern. Therefore, dietary exposure through water is not a concern.

2. *Non-dietary exposure.* There is no available information quantifying non-dietary exposure to imazamox. However, based on the physical and chemical characteristics of the compound, the proposed use pattern and available information concerning its environmental fate, non-dietary exposure is not expected.

#### D. Cumulative Effects

Because of the low toxicity of imazamox and its metabolic degradates, there is no concern regarding the potential for cumulative effects of imazamox and its degradates with other substances with a common mode of action. Imazamox belongs to the imidazolinone class of chemistry. The herbicidal activity of the imidazolinones is due to the inhibition of acetohydroxy acid synthase (AHAS), an enzyme only found in plants. AHAS is part of the biosynthetic pathway leading to the formation of branched-chain amino acids. Animals lack AHAS and this biosynthetic pathway. This lack of AHAS contributes to the low toxicity of imazamox in mammals. We are aware of no information to indicate or suggest that imazamox has any toxic effects on mammals that would be cumulative with those of any other chemical. Since imazamox is relatively non-toxic, cumulative effects of residues of imazamox and other chemicals are not anticipated. Therefore, for the purposes of this tolerance petition, no assumption has been made with regard to cumulative exposure with other chemicals having a common mode of herbicidal action.

#### E. Safety Determination

1. *U.S. population.* Because imazamox and its degradates are not of toxicological concern and there is low exposure to imazamox and its degradates, this exemption from the requirement of a tolerance in or on all raw agricultural commodities will not

pose a dietary risk under reasonably foreseeable circumstances.

2. *Infants and children.* Likewise, because imazamox and its degradates are not of toxicological concern and there is low exposure to imazamox and its degradates, this exemption from the requirement of a tolerance in or on all raw agricultural commodities will not pose a dietary risk under reasonably foreseeable circumstances to the U.S. population sub-group of infants and children.

#### F. International Tolerances

There is no Codex maximum residue level established for residues of imazamox on any crops.

FR Doc. 02-32260 Filed 12-20-02; 8:45 a.m.]

BILLING CODE 6560-50-S

## FARM CREDIT ADMINISTRATION

### Farm Credit Administration Board; Special Meeting

**AGENCY:** Farm Credit Administration.

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

**DATE AND TIME:** The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 20, 2002, from 9 a.m. until such time as the Board concludes its business.

**FOR FURTHER INFORMATION CONTACT:** Jeanette C. Brinkley, Acting Secretary to the Farm Credit Administration Board, (703) 883-4009, TTY (703) 883-4056.

**ADDRESSES:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

**SUPPLEMENTARY INFORMATION:** This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

#### Open Session

##### A. Approval of Minutes

—November 7, 2002 (Open and Closed)

##### B. Reports

—FCS Building Association's Quarterly Report  
—Federal Farm Credit Banks Funding Corporation Update

##### C. New Business—Regulations

—Proposed Rule—Disclosure of Effective Interest Rates

—Proposed Rule—Distressed Loan Restructuring

Dated: December 18, 2002.

**Jeanette C. Brinkley,**  
Acting Secretary, Farm Credit Administration Board.

[FR Doc. 02–32373 Filed 12–19–02; 11:19 am]

BILLING CODE 6705–01–P

**FEDERAL RESERVE SYSTEM**

**Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB**

**AGENCY:** Board of Governors of the Federal Reserve System.

**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–I’s 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—Cindy Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Mail stop 41,

Washington, DC 20551 (202–452–3829). OMB Desk Officer—Joseph Lackey—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

**Final approval under OMB delegated authority of the extension for three years, without revision, of the following reports:**

1. *Report title:* Recordkeeping and Disclosure Requirements Associated with Loans Secured by Real Estate Located in Flood Hazard Areas Pursuant to Section 208.25 of Regulation H.

*Agency form number:* Reg H–2.

*OMB Control number:* 7100–0280.

*Frequency:* Event–generated.

*Reporters:* State member banks.

*Annual reporting hours:* 111,420 hours.

*Estimated average hours per response:* Notice of special flood hazards to borrowers and servicers, 0.08 hours; notice to the Federal Emergency Management Agency (FEMA) of servicer, 0.08 hours; notice to FEMA of change of servicer, 0.08 hours; and retention of standard FEMA form, 0.04 hours.

*Number of respondents:* 976.

Small businesses are affected.

*General description of report:* This information collection is mandatory (12 U.S.C. 248(a)(1)). Because the Federal Reserve does not collect any of FEMA forms this information collection is not given confidential treatment. However, should any of these records come into the possession of the Federal Reserve, such information may be protected from disclosure by exemptions 4 and 6 of the Freedom of Information Act (5 U.S.C. 552(b)(4) and (b)(6)).

*Abstract:* Regulation H requires state member banks to notify a borrower and servicer when loans secured by real estate are determined to be in a special

flood hazard area and notify them whether flood insurance is available; notify FEMA of the identity of, and any change of, the servicer of a loan secured by real estate in a special flood hazard area; and retain a completed copy of the Standard Flood Hazard Determination Form used to determine whether property securing a loan is in a special flood hazard area.

Board of Governors of the Federal Reserve System, December 17, 2002.

**Jennifer J. Johnson,**  
Secretary of the Board.

[FR Doc. 02–32185 Filed 12–20–02; 8:45 am]

BILLING CODE 6210–01–S

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Proposed Information Collection Activity; Comment Request**

*Proposed Projects:*

*Title:* Federal Parent Locator Service.  
*OMB No.* 0970–0142.

*Description:* State and local child support enforcement agencies may request the Federal Parent Locator Service (FPLS) to assist in locating parents in order to establish or enforce child support. The FPLS serves as a conduit between child support enforcement offices and Federal and state agencies by conducting weekly, biweekly, or monthly matches of the collected information with various agencies and distributing the information back to the requesting state or local child support office.

*Respondents:* State and local IV–D child support offices.

**ANNUAL BURDEN ESTIMATES**

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
FPLS submissions .....	5	24	1	120
<i>Estimated Total Annual Burden Hours</i> .....	.....	.....	.....	120

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and

comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L’Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments 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)

the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 16, 2002.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 02-32183 Filed 12-20-02; 8:45 am]

BILLING CODE 4184-01-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. 02N-0063]

**Agency Information Collection Activities; Submission for OMB Review; Comment Request; Consumer Surveys on Food and Dietary Supplement Labeling Issues**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (PRA).

**DATES:** Submit written comments on the collection of information by January 22, 2003.

**ADDRESSES:** Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235,

Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

**FOR FURTHER INFORMATION CONTACT:** Peggy Robbins, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1223.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Consumer Surveys on Food and Dietary Supplement Labeling Issues—(OMB Control Number 0910-0492)—Extension**

FDA is requesting an extension of the OMB approval of consumer surveys to help FDA's Center for Food Safety and Applied Nutrition formulate decisions and policies affecting the labeling of conventional foods and dietary supplements. Determining how consumers are likely to interpret various kinds of claims, disclaimers, warnings, caution statements, and notice statements that might appear in labeling is critical to agency decisionmaking under the Federal Food, Drug, and Cosmetic Act and the first amendment. It is often necessary to test actual or proposed labeling statements in realistic situations with typical consumers to determine what these label statements are communicating to consumers.

FDA or its contractor will collect and use information gathered from telephone, mail, shopping mall intercept, or Internet surveys to evaluate how consumers understand and respond to existing label statements, label statements proposed by industry or consumers, and other label statements that are under consideration as part of FDA's policy development process. Potential respondents to the surveys will be individual consumers either randomly chosen to represent specified populations or randomly

assigned to experimental treatment conditions to control for the effects of individual differences in the population on the interpretation of label statements. In all instances, FDA will strive to collect a representative sample of individuals from the overall population or from relevant population groups as appropriate. FDA's general selection method will use stratification, with random sampling within the strata, to achieve representativeness for both overall populations and sensitive subpopulations, such as at-risk individuals or user segments. In the rare cases where geography is a limiting factor, FDA will use population-based cluster sampling to limit Government expense while preserving the statistical properties of the sample.

Respondents will provide background information and respond to package labels that contain the variations of label statements to be tested. Measures will include both self-reported comprehension and acceptance, as well as direct behavioral measures of consumer use and understanding of the package labeling.

FDA will use the information from the surveys in evaluating regulatory and policy options with respect to labeling. The agency often lacks empirical data about how consumers understand and respond to statements they might see in product labeling. The information gathered from such surveys can be used to test consumer comprehension and behavioral impact of various label statements and formats, taking into account the existing distribution of behavior, knowledge, and attitudes in the population that provides the context for understanding such statements. The surveys will help FDA assess consumer reactions to existing and proposed label statements.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

Type of Survey	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Mail questionnaire	1,000	1	1,000	1	1,000
Telephone survey	2,000	1	2,000	.5	1,000
Internet or mail intercept survey	4,000	1	4,000	.5	2,000
<b>Total</b>					<b>4,000</b>

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates assume that as many as one mail survey project, one telephone survey project, and two

Internet or mall intercept survey projects may be done on an annual basis. Estimates are based on the

expected number of respondents necessary to obtain a statistically significant representation of important

consumer segments (e.g., users of relevant regulated products or at-risk population groups) and the number of labeling options that may need to be tested.

Dated: December 16, 2002.

**Margaret M. Dotzel,**

*Assistant Commissioner for Policy.*

[FR Doc. 02-32160 Filed 12-20-02; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 99N-1833]

#### **SoloPak Laboratories, Inc.; Withdrawal of Approval of 1 New Drug Application and 38 Abbreviated New Drug Applications; Correction**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of June 21, 1999 (64 FR 33097; corrected July 19, 1999 (64 FR 38675)). The document, which announced the withdrawal of approval of 1 new drug application (NDA) and 38 abbreviated new drug applications held by SoloPak Laboratories, Inc., inadvertently withdrew approval of NDA 19-961 for Ganite (gallium nitrate). FDA has subsequently learned that SoloPak, at the time it requested withdrawal of this NDA, was not its holder. Therefore, SoloPak was not authorized to make such a request. FDA confirms that approval of NDA 19-961, currently held by Genta, Inc., is still in effect.

**DATES:** Effective July 19, 1999.

**FOR FURTHER INFORMATION CONTACT:** Florine P. Purdie, Center for Drug Evaluation and Research (HFD-7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Dated: November 25, 2002.

**Janet Woodcock,**

*Director, Center for Drug Evaluation and Research.*

[FR Doc. 02-32161 Filed 12-20-02; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### **Cardiovascular and Renal 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:* Cardiovascular and Renal 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 6, 2003, from 8:30 a.m. to 5 p.m.; and on January 7, 2003, from 8 a.m. to 4:30 p.m.

*Location:* Holiday Inn, Kennedy Ballroom, 8777 Georgia Ave., Silver Spring, MD.

*Contact Person:* Jayne E. Peterson, 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, petersonj@cder.fda.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 12533. Please call the Information Line for up-to-date information on this meeting. When available, background materials for this meeting will be posted 1-business day prior to the meeting on the FDA Web site at [www.fda.gov/ohrms/dockets/ac/acmenu.htm](http://www.fda.gov/ohrms/dockets/ac/acmenu.htm). (Click on the year 2003 and scroll down to Cardiovascular and Renal Drugs Advisory Committee.)

*Agenda:* On January 6, 2003, beginning at 8:30 a.m., the committee will discuss supplemental new drug application (SNDA) 20-386/S-032, COZAAR (losartan potassium) Tablets, Merck and Co., for the proposed indication of reduction in the risk of cardiovascular morbidity and mortality as measured by the combined incidence of cardiovascular death, stroke, and myocardial infarction in hypertensive patients with left ventricular hypertrophy. On January 7, 2003, beginning at 8 a.m., the committee will discuss SNDA 20-297/S-009, COREG (carvedilol), GlaxoSmithKline, for the proposed indication to reduce mortality and the risk of infarction in clinically stable patients who have survived the

acute phase of a myocardial infarction and have a left ventricular ejection fraction  $\leq 40$  percent.

*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 December 23, 2002. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on January 6 and 7, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 23, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Jayne E. Peterson at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 16, 2002.

**Linda Arey Skladany,**

*Associate Commissioner for External Relations.*

[FR Doc. 02-32159 Filed 12-20-02; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Inspector General

#### **Program Exclusions: November 2002**

**AGENCY:** Office of Inspector General, HHS.

**ACTION:** Notice of program exclusions.

During the month of November 2002, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal

Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
<b>PROGRAM-RELATED CONVICTIONS</b>	
ADEM, SUNDAY JOSEPH .....	12/19/2002
INGLEWOOD, CA	
DE AQUINO, ANTHONY .....	12/19/2002
HO-HO-KUS, NJ	
DRAKE, MELISSA ANN .....	12/19/2002
MAYSEL, WV	
ELSAIED, SAYAD MOSTAFA KAMAL .....	12/19/2002
LOS ANGELES, CA	
FONTENOT, MONA .....	12/19/2002
JARREAU, LA	
FORTIN, KAREN M .....	12/19/2002
CASCO, ME	
JACKSON, DONALD EDWARD FAYETTEVILLE, TN	12/19/2002
JONES, LORETTA ANN .....	12/19/2002
SIGNAL HILL, CA	
JONES, LINDA GAIL .....	12/19/2002
FLORENCE, SC	
MAGLIO, GLYNIS BROWN .....	12/19/2002
POTTSBORO, TX	
MEN, YEN .....	12/19/2002
KENT, WA	
MILES, ALICE BURNS .....	12/19/2002
TALLAHASSEE, FL	
NADOLNI, DIANE MARIE .....	12/19/2002
LAKELAND, TN	
NURSERY ROAD VILLA, INC CLEARWATER, FL	12/19/2002
O'NEAL, JACQUELINE .....	12/19/2002
MIRAMAR, FL	
OSORIA, KARLA .....	12/19/2002
RESEDA, CA	
OTIS, STEPHEN MASON .....	12/19/2002
MILTON, FL	
PEREZ, LEONARDO ANDREZ PEMBROKE PINES, FL	06/04/2001
QUARANTA, NICHOLAS .....	12/19/2002
MIAMI, FL	
RICHARDS, PATRICIA ANN ...	12/19/2002
WRIGHT CITY, OK	
RODRIGUEZ, FRANCISCO .....	12/19/2002
MIAMI, FL	
VIEITES, MERCEDES .....	01/10/2002
PEMBROKE PINES, FL	
YANCY, KAUWYANA RASHAE LITTLE ROCK, AR	12/19/2002
<b>FELONY CONVICTION FOR HEALTH CARE FRAUD</b>	
BOYD, JONATHAN YATES .....	12/19/2002
HOUSTON, TX	
DESCANT, STEVEN PATRICK	12/19/2002

Subject, city, state	Effective date	Subject, city, state	Effective date
SAN ANTONIO, TX REAUME, DAVID GEORGE .... SAN MARCOS, TX	12/19/2002	RANCHO PALOS VERDES, CA BELLAIRE, EMILY .....	12/19/2002
<b>FELONY CONTROL SUBSTANCE CONVICTION</b>			
DELEHANTY, ALLISON JILL ... BETHALTO, IL	12/19/2002	ANTELOPE, CA BIRD, VICTORIA HAINES .....	12/19/2002
HAYS, JON RILEY .....	12/19/2002	CHANDLER, AZ BOHANNON, RHONDA C BRISCOE .....	12/19/2002
MARION, IL		PLEASUREVILLE, KY	
STILLWILL, GEORGE A .....	12/19/2002	BUSH, FRANK J .....	12/19/2002
FORT DIX, NJ		DENVER, CO	
WOLF, LESLIE RAE .....	12/19/2002	CANTILADO, STEVEN PHIL-LIP .....	12/19/2002
WAYNESVILLES, OH		SAN PEDRO, CA	
WOLMERING, CAROLYN A .... CLARENCE CTR, NY	12/19/2002	CARLONI, SUSAN M .....	12/19/2002
<b>PATIENT ABUSE/NEGLECT CONVICTIONS</b>			
ASHER, JONATHAN PATRICK FT COLLINS, CO	12/19/2002	PROVIDENCE, RI	
BEST SARVER, REBECCA .....	12/19/2002	CELAYA, LINDA GAIL .....	12/19/2002
ENID, OK		LOS ANGELES, CA	
BURTON, PHILLIP TAROME ..	12/19/2002	CHRISTOPHERSON, AN-NETTE L .....	12/19/2002
LANCASTER, CA		SCHERTZ, TX	
ELLIOTT, NICOLE LEE ANN ...	12/19/2002	COLLINS, BEVERLY R .....	12/19/2002
SPOKANE, WA		PORTLAND, ME	
HOBSON, JAMES T .....	12/19/2002	CONNER, DENITA DEANNE ...	12/19/2002
HOULKA, MS		LAKE CHARLES, LA	
LEE, WINFRED .....	12/19/2002	COOPER, DEBRA A .....	12/19/2002
WASHINGTON, DC		ROANOKE, VA	
MARTIN, SCOTT W .....	12/19/2002	CREEF, BRENDA S .....	12/19/2002
JOHNSON CITY, TN		MIDLOTHIAN, VA	
MOORE, CONSTANCE .....	12/19/2002	CRUZ, SHANNON L .....	12/19/2002
ROCHESTER, NY		PUEBLO WEST, CO	
RANSON, CLIFFORD .....	12/19/2002	DAMON, DONNA LYNN .....	12/19/2002
COLUMBIA, SC		TUCSON, AZ	
SMITH, KAREN KELLY .....	12/19/2002	DANSIE, VAE ENNISS .....	12/19/2002
FAIRFAX, OK		RIVERTON, UT	
SPEIGHT, KIEA .....	12/19/2002	DE GASTON, ALEXIS NEAL ...	12/19/2002
ENID, OK		MORENO VALLEY, CA	
WEBB, CURTIS O'NEAL .....	12/19/2002	DIAZ, FREDERICK .....	12/19/2002
BANGOR, PA		BRONX, NY	
<b>CONTROLLED SUBSTANCE CONVICTIONS</b>			
HODJATI, HASSAN H. SILVER SPRING, MD		DORIAN, JEFFREY PHILIP .... DAVIE, FL	12/19/2002
<b>LICENSE REVOCATION/SUSPENSION/ SURRENDERED</b>			
ANDERSON, SUSAN COL-LEEN .....	12/19/2002	DREW, ARVIETTE D .....	12/19/2002
LUSBY, MD		PORTSMOUTH, VA	
ANDERSON, JOY .....	12/19/2002	DYESS, DANIEL KEITH .....	12/19/2002
FARGO, ND		MOBILE, AL	
ANDERSON, JORDAN BAX-TER .....	12/19/2002	EDINGTON, STEVEN NOLAN PARAGOULD, AR	12/19/2002
OMAHA, NE		EDWARDS, CARMEN WIL-LIAMS .....	12/19/2002
ANTHONY, DAWN M .....	12/19/2002	ANTIOCH, CA	
GREENSBORO, NC		ESPINO, GRISELDA .....	12/19/2002
ASPLIN, MICHAEL S .....	12/19/2002	SANTA ANA, CA	
SEMI VALLEY, CA		FELDMAN, NORMA J .....	12/19/2002
ATKINSON, ORAN W .....	12/19/2002	HARTSDALE, NY	
BRONX, NY		FOREMAN, JULIE ANN .....	12/19/2002
BAIER, FIN TRAVIS .....	12/19/2002	HASTINGS, NE	
PRESCOTT, AZ		FRAULINI, MICHAEL MARK ....	12/19/2002
BAKER, KEVIN WAYNE .....	12/19/2002	PORTSMOUTH, OH	
NORFOLK, NE		GOODWIN, BARBARA G .....	12/19/2002
BECKER, STACY LYNN SHIR-LEY .....	12/19/2002	DICKSON, TN	
<b>FELONY CONVICTION FOR HEALTH CARE FRAUD</b>			
		GORE, OWEN C .....	12/19/2002
		CHANDLER, AZ	
		GRAY, HARRY L .....	12/19/2002
		BRADFORD, VT	
		GREEN, MARY ELISE .....	12/19/2002
		TUCSON, AZ	
		GREGOR, CHARLENE M .....	12/19/2002
		PARK CITY, UT	
		GROUT, RANDALL L .....	12/19/2002
		LENOIR, NC	
		HAMPTON, MARY CAROL .....	12/19/2002
		GAINSVILLE, TX	
		HANLON, DONNA C .....	12/19/2002

Subject, city, state	Effective date	Subject, city, state	Effective date	Subject, city, state	Effective date
OAKFORD, PA HENRICHSEN, DAVID A .....	12/19/2002	EUREKA SPRINGS, AR RISING, ALISA ANN .....	12/19/2002	SPANISH FORT, AL SERVIALL SYSTEMS .....	12/19/2002
PHOENIX, AZ HERRING, ALMA JANETTE GRIFFIN .....	12/19/2002	OGALLALA, NE ROONEY, LORI COUTRE .....	12/19/2002	MIAMI, FL	
LAKE HAVASU CITY, AZ HILL, EDGAR H JR .....	12/19/2002	CARLISLE, PA ROSENTHAL, MICHAEL JAY ..	12/19/2002	<b>QUALITY IMPROVEMENT ORGANIZATION CASES</b>	
VIRGINIA BCH, VA HOLLAR, KIMBERLY J .....	12/19/2002	CLAREMONT, CA SALAS, ANGELA AGATHA .....	12/19/2002	EDWARDS, GREGSON .....	11/27/2002
MAIDEN, NC HORTERT, SHERYL L .....	12/19/2002	SOMERTON, AZ SALAZAR, HOPE .....	12/19/2002	Dated: December 4, 2002.	
CORAOPOLIS, PA JOERG, BRIAN S .....	12/19/2002	SANFORD, CO SCHMELTER, BRENDA L .....	12/19/2002	<b>Katherine B. Petrowski,</b> <i>Director, Exclusions Staff, Office of Inspector General.</i>	
BASEHOR, KS JOHNSON, KIMBERLY KAY ...	12/19/2002	MARICOPA, AZ SCHUETZ, LAWANDA MICHELLE .....	12/19/2002	[FR Doc. 02-32000 Filed 12-20-02; 8:45 am]	
ALEX, OK JOHNSON, ELLEN DEE .....	12/19/2002	AUBURN, NE SCOTT, LYNDA MARIE .....	12/19/2002	<b>BILLING CODE 4150-04-P</b>	
CYPRESS, CA KAUFFMAN, FRANCINE J .....	12/19/2002	PEORIA, AZ SELF, RHONDA SUE .....	12/19/2002	<b>DEPARTMENT OF HEALTH AND HUMAN SERVICES</b>	
VISTA, CA KEA, WILLIAM PAUL .....	12/19/2002	SAN DIEGO, CA SKROCKI, BRIAN R .....	12/19/2002	<b>Substance Abuse and Mental Health Services Administration</b>	
PASADENA, CA KENNEDY, JANET MARIE .....	12/19/2002	PLYMOUTH MEETING, PA SMITH, JEFFRY ALAN .....	12/19/2002	<b>The President's New Freedom Commission on Mental Health; Notice of Meeting</b>	
MAYER, AZ KILLION, PATTY ANN .....	12/19/2002	RIVERSIDE, CA SMITH, YTH ZOFFMAN .....	12/19/2002	Pursuant to Executive Order 13263, notice is hereby given of a meeting of the President's New Freedom Commission on Mental Health in January 2003.	
SALT LAKE CITY, UT KING, WILLIAM S .....	12/19/2002	LITTLETON, CO SMITH, MARY LEE .....	12/19/2002	The meeting will be open and will consider how to accomplish the Commission's mandate to conduct a comprehensive study of the United States mental health service delivery system and to make recommendations on improving the delivery of public and private mental health services for adults and children. The Commission meeting will receive reports from several of its subcommittees, including Older Adults, Rural Issues, Rights and Engagement and Mental Health Interface with General Medicine. There will also be panel presentations on several related topics.	
SAN DIEGO, CA KUNTZ, RITA ANN .....	12/19/2002	GRAND ISLAND, NE SNYDER, MICHELLE JEAN ...	12/19/2002	Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.	
SALINA, KS LEYBA, SHERRY .....	12/19/2002	WISNER, NE SPINAZZOLA, VICTORIA .....	12/19/2002	Additional information and a roster of Commission members may be obtained either by accessing the Commission Web site, <a href="http://www.mentalhealthcommission.gov">http://www.mentalhealthcommission.gov</a> , or by communicating with the contact whose name and telephone number is listed below.	
PARADISE, CA LIPNICK, ROBERT N .....	12/19/2002	PHOENIX, AZ STONE, SUSAN M .....	12/19/2002	<i>Committee Name:</i> The President's New Freedom Commission on Mental Health.	
WASHINGTON, DC LONG, JAMES M .....	12/19/2002	DAYTON, OH TURNER, HERBERT LLOYD ..	12/19/2002		
BIRMINGHAM, AL LOOMAN, LESLIE CLINTON ...	12/19/2002	CROWN POINT, IN VILLANUEVA, GRACIELA .....	12/19/2002		
EDMOND, OK MANOJLOVICH, PAMELA SUE .....	12/19/2002	REEDLEY, CA WALLINGFORD, TERESA LEANN .....	12/19/2002		
SEWICKLEY, PA MARSZALEK-PATCH, JAC- QUELINE S .....	12/19/2002	WICHITA, KS WARD, GREGORY ALAN .....	12/19/2002		
VERNON, CT MCALISTER, KIMBERLY MICHELLE .....	12/19/2002	TOPEKA, KS WEINHEIMER, EUGENE H .....	12/19/2002		
SHAWNEE, OK MCGANN, JON D .....	12/19/2002	COLUMBIA, MO WHITMORE, A JAMES III .....	12/19/2002		
ENCINITAS, CA MUIRHEAD, RICHARD JAMES JR .....	12/19/2002	NEW ORLEANS, LA WILLIAMS, JON MARK .....	12/19/2002		
SEATTLE, WA MURPHY, DONNA LYNN .....	12/19/2002	LAKE CHARLES, LA WILSON, MARC DAVID .....	12/19/2002		
MERRIAM, KS NEDD, JOSETTA .....	12/19/2002	EL PASO, TX WINANS, STEVEN RONALD ...	12/19/2002		
SHREVEPORT, LA NEHLS, DONAVAN EUGENE SR .....	12/19/2002	PHOENIX, AZ WINDSOR, MICHAEL SHAWN	12/19/2002		
CALICO ROCK, AR NELSON, J KENT .....	12/19/2002	ROWLETT, TX YU, JUN .....	12/19/2002		
BOUNTIFUL, UT OBERSTAR, TERRILEE MAR- GARET .....	12/19/2002	ROWLAND HGTS, CA ZIEGEN, GARY V .....	12/19/2002		
LANCASTER, CA PATEL, PRAVIN KUMAR .....	12/19/2002	FRESNO, CA			
SYRACUSE, NY PEDERSEN, LAURA LAREE WEAVER .....	12/19/2002	<b>FEDERAL/STATE EXCLUSION/ SUSPENSION</b>			
NAMPA, ID PERCY, PIERRE JOEL .....	12/19/2002	EDMONDS, QUEHEMIAH ZALONTE. SACRAMENTO, CA	12/19/2002		
CHANDLER, AZ RAY, DIANNA L .....	12/19/2002	<b>OWNED/CONTROLLED BY CONVICTED ENTITIES</b>			
ASHEVILLE, NC RILEY, RODNEY WAYNE .....	12/19/2002	BEST NURSING CARE, INC ... MIAMI, FL COASTAL OUTPATIENT SVCS, INC .....	12/19/2002		

*Meeting Date/Time:* Open: January 7, 2003, 5 p.m. to 6 p.m., Open: January 8, 2003, 1:30 p.m. to 5 p.m., Open: January 9, 2003, 8:30 a.m. to 1 p.m.

*Place:* Crystal Gateway Marriott 1700 Jefferson Davis Highway Arlington, Virginia.

*Contact:* Claire Heffernan, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 13C-26, Rockville, MD 20857; Telephone: (301) 443-1545; Fax: (301) 480-1554 and e-mail: [Cheffern@samhsa.gov](mailto:Cheffern@samhsa.gov); Web site: <http://www.mentalhealthcommission.gov>

Dated: December 16, 2002.

**Toian Vaughn,**

*Committee Management Officer, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 02-32162 Filed 12-20-02; 8:45 am]

BILLING CODE 4162-20-P

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**Cahaba River National Wildlife Refuge**

**AGENCY:** Fish and Wildlife Service, Department of the Interior.

**ACTION:** Notice.

**SUMMARY:** The Director of the U.S. Fish and Wildlife Service has approved the establishment of Cahaba River Wildlife Refuge in Bibb County, Alabama.

**DATES:** This action was effective on December 23, 2002.

**FOR FURTHER INFORMATION CONTACT:** Dwight Cooley, Project Leader, Cahaba River National Wildlife Refuge, c/o Wheeler National Wildlife Refuge, 2700 Refuge Headquarters Road, Decatur, Alabama 35603; telephone: 256/353-7243, fax: 256/340-9728, e-mail: [Dwight-Cooley@fws.gov](mailto:Dwight-Cooley@fws.gov).

**SUPPLEMENTARY INFORMATION:** The Director of the U.S. Fish and Wildlife Service has approved the establishment of Cahaba River National Wildlife Refuge to (1) conserve, enhance, and restore the native aquatic and terrestrial community characteristics of the Cahaba River; (2) to conserve, enhance, and restore habitat to maintain and assist in the recovery of animals and plants that are listed as threatened or endangered species; (3) to ensure that hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation are the priority general public uses of the refuge when providing opportunities for compatible fish- and wildlife-oriented recreation; and (4) to encourage the use of volunteers and to facilitate partnerships among the Service, local communities, conservation organizations, and other non-federal entities when promoting public

awareness of the refuge's resources and those of the National Wildlife Refuge System.

**Authority:** This notice is published under the authority of the Cahaba River National Wildlife Refuge Act, Public Law 106-331, and the National Wildlife Refuge System Administration Act of 1996, as amended (16 U.S.C., 668dd-668ee).

Dated: December 16, 2002.

**Sam D. Hamilton,**

*Regional Director.*

[FR Doc. 02-32210 Filed 12-23-02; 8:45 am]

BILLING CODE 4310-55-M

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**Red River National Wildlife Refuge**

**AGENCY:** Fish and Wildlife Service; Department of the Interior.

**ACTION:** Notice.

**SUMMARY:** The Director of the U.S. Fish and Wildlife Service has approved the establishment of Red River National Wildlife Refuge, located along the Red River Waterway in Caddo, Bossier, Red River, Natchitoches, and De Soto Parishes, Louisiana.

**DATES:** This action was effective on December 23, 2002.

**FOR FURTHER INFORMATION CONTACT:** George Chandler, Project Leader, Red River National Wildlife Refuge, c/o North Louisiana Refuges' Complex, 11372 Highway 143, Farmerville, Louisiana 71241; telephone: 318/726-4222, fax: 318/726-4667, e-mail: [George\\_Chandler@fws.gov](mailto:George_Chandler@fws.gov).

**SUPPLEMENTARY INFORMATION:** The Director of the Fish and Wildlife Service has approved the establishment of Red River National Wildlife Refuge to provide for the restoration and conservation of native plant and animal communities on suitable sites in the Red River Valley, including restoration of extirpated species; to provide habitat to more than 350 species of birds (including migratory and resident waterfowl, shorebirds, and neotropical migratory birds), aquatic life, and a wide array of other species associated with river basin ecosystems; and to provide technical to private landowners in the restoration of their lands for the benefit of fish and wildlife.

**Authority:** This notice is published under this authority of the Red River National Wildlife Refuge Act, Pub. L. 106-300, and the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C., 668dd-668ee).

Dated: December 16, 2002.

**Sam D. Hamilton,**

*Regional Director.*

[FR Doc. 02-32211 Filed 12-20-02; 8:45 am]

BILLING CODE 4310-55-M

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

[NV-930-4210-05; N-59080, N-6721]

**Notice of Realty Action: Partial Transfer of Patent/Change of Use for Recreation and Public Purposes**

**AGENCY:** Bureau of Land Management.

**ACTION:** Recreation and public purpose partial transfer of patent/change of use.

**SUMMARY:** The following described public land in Las Vegas, Clark County, Nevada was patented to the Clark County School District for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*) in Patent #27-73-0067 (N-6721), dated May 11, 1973. The City of Las Vegas, a qualified recreation and public purpose holder, proposes to develop the transferred land as a public park according to the plan of development for case file #N-59080. The school district wishes to transfer a portion of this patented land to the City of Las Vegas. The change of use will be from a public school to a public park.

**Mount Diablo Meridian, Nevada**

T. 21 S., R. 60 E., sec 2, SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>

Containing 10 acres, more or less.

The land is not required for any federal purpose. The partial transfer of patent/change of use is consistent with current Bureau planning for this area and would be in the public interest. The patent, when transferred, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States, as detailed in the original patent: and will be subject to:

1. An easement 30 feet in width along the south boundary; and an easement 30 feet in width along the west boundary in favor of the City of Las Vegas for roads, public utilities and flood control purposes.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties



may submit comments regarding the proposed partial transfer of patent/change of use for classification of the lands to the Field Manager, 4701 N. Torrey Pines Drive, Las Vegas Field Office, Las Vegas, Nevada 89130.

**Classification Comments:** Interested parties may submit comments involving the suitability of the land for a public park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

**Application Comments:** Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a public park.

Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for patent transfer until after the classification becomes effective.

Dated: October 22, 2002.

**Rex Wells,**  
*Assistant Field Manager, Division of Lands,  
 Las Vegas, NV.*  
 [FR Doc. 02-32188 Filed 12-20-02; 8:45 am]  
**BILLING CODE 4510-HC-P**

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**Concession Contracts and Permits:  
 Expiring Contracts; Extension for up to  
 One Year**

**AGENCY:** National Park Service, Interior.  
**ACTION:** Public notice.

**SUMMARY:** Pursuant to the terms of existing concession permits, with the exception of construction on National

Park Service lands, public notice is hereby given that the National Park Service intends to provide visitor services under the authority of a temporary concession contract with a term not to exceed December 31, 2003, or until such time as a new contract is awarded, whichever occurs sooner.

**SUPPLEMENTARY INFORMATION:** The permits listed below have been extended to the maximum allowable under 36 CFR 51.23. Under the provisions of current concession permits, with one exception, and pending the development and public solicitation of a prospectus for a new concession permit, the National Park Service authorizes continuation of visitor services under a temporary concession contract for a period not to exceed December 31, 2003, or until such time as a new contract is awarded, whichever occurs sooner. The exception precludes construction on National Park Service lands, regardless of whether the current permit authorizes such activity, the temporary contract does not affect any rights with respect to selection for award of a new concession contract.

Concessioner ID No.	Concessioner name	Park
GOGA002 .....	Council of American Youth Hostels (Fort Mason) .....	Golden Gate NRA.
GOGA003 .....	Council of American Youth Hostels (Fort Barry) .....	Golden Gate NRA.
GOGA004 .....	Park Host .....	Golden Gate NRA.
MORA004 .....	John P. Squires .....	Mount Rainier National Park.
OLYM048 .....	Wildwater River Tours .....	Olympic National Park.
OLYM057 .....	Olympic Raft and Guide Service .....	Olympic National Park.
PORE001 .....	Drakes Beach Snack Bar .....	Point Reyes National Seashore.
PORE002 .....	Five Brooks Stables .....	Point Reyes National Seashore.
REDW001 .....	American Youth Hostels, Inc .....	Redwoods National Park.
USAR001 .....	Division of Vocational Rehabilitation .....	U.S.S. Arizona Memorial.

**EFFECTIVE DATE:** January 2, 2003.

**FOR FURTHER INFORMATION CONTACT:**  
 Cynthia Orlando, Concession Program  
 Manager, National Park Service, 1849 C  
 Street, NW (2410), Washington, DC,  
 20240, Telephone, 202/513-7144.

Dated: November 26, 2002.

**Richard M. Cripe,**  
*Associate Director, Administration,  
 Workforce Development and Business  
 Practices.*  
 [FR Doc. 02-32163 Filed 12-20-02; 8:45 am]  
**BILLING CODE 4310-70-M**

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**Concession Contracts and Permits:  
 Expiring Contracts; Extension for Up  
 to One Year**

**AGENCY:** National Park Service, Interior.  
**ACTION:** Public notice.

**SUMMARY:** Pursuant to 36 CFR 51.23, public notice is here by given that the National Park Service proposes to extend the following expiring concession contracts until December 31, 2003, or until such time as a new contract is awarded, whichever occurs sooner.

**SUPPLEMENTARY INFORMATION:** All of the listed concession authorizations will expire by their terms on or before December 31, 2002. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to develop prospectuses leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Concessioner ID No.	Concessioner name	Park
CABR001 .....	Cabrillo National Monument Foundation .....	Cabrillo National Monument
CHIS002 .....	Channel Islands Aviation, In .....	Channel Islands National Park
CHIS003 .....	Truth Aquatics, Inc .....	Channel Islands National Park
CRMO001 .....	Craters of the Moon Natural History Association .....	Craters of the Moon National Monument

Concessioner ID No.	Concessioner name	Park
GOGA007 .....	Golden Gate National Park Association .....	Golden Gate NRA
NAVO002 .....	Hawaii Natural History Association .....	Hawaii Volcanoes National Park
KALA001 .....	Molokai Mule Ride, Inc .....	Kalaupapa National Historical Park
LABE001 .....	Lava Beds Natural History Association .....	Lava Beds National Monument
LACH002 .....	The House That Jack Built .....	North Cascades National Park
LACH004 .....	McGregor Mountain Outdoor Supply .....	North Cascades National Park
MORA001 .....	Rainier Mountaineering, Inc .....	Mount Rainier
OLYM047 .....	Allen Rancourt .....	Olympic National Park
OLYM064 .....	Edward Rutherford .....	Olympic National Park
OLYM006 .....	Hurricane Ridge Winter Sports Club .....	Olympic National Park
PWRO001 .....	SW Parks and Monuments Association .....	Pacific West Regional Office
ROLA003 .....	Ross Lake Resort, Inc .....	Ross Lake NRA
SEKI001 .....	Timothy B. and Patty Lovern .....	Sequoia-Kings Canyon National Parks
SEKI005 .....	Mineral King Pack Station .....	Sequoia-Kings Canyon National Parks
USAR002 .....	Arizona Memorial Museum Association .....	USS Arizona Memorial
WHIS001 .....	Oak Bottom Marina .....	Whiskeytown-Shasta-Trinity NRA

**EFFECTIVE DATE:** January 2, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Cynthia Orlando, Concession Program Manager, National Park Service, 1849 C Street, NW., (2410), Washington, DC, 20240, Telephone 202/513-7144.

Dated: November 26, 2002.

**Richard M. Cripe,**

*Associate Director, Administration, Workforce Development and Business Practices.*

[FR Doc. 02-32164 Filed 12-20-02; 8:45 am]

**BILLING CODE 4310-70-M**

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**Concession Contracts and Permits:  
Expiring Contracts; Extension**

**AGENCY:** National Park Service, Interior.

**ACTION:** Public notice.

**SUMMARY:** Pursuant to the terms of existing concession contracts, public notice is hereby given that the National Park Service intends to request a continuation of visitor services for the following expiring concession contracts for a period of up to 2 years, or until such time as a new contract is awarded, whichever occurs sooner.

**SUPPLEMENTARY INFORMATION:** The contracts listed below have been extended to the maximum allowable under 36 CFR 51.23. Under the provisions of current concession contracts and pending the development and public solicitation of a prospectus for a new concession contract, the National Park Service authorizes continuation of visitor services for a period not-to-exceed 2 years, or until such time as a new contract is awarded, whichever occurs sooner, under the terms and conditions of current contracts as amended. The continuation of operations does not affect any rights with respect to selection for award of a new concession contract.

Concessional ID No.	Concessioner name	Park
LAME001 .....	Forever Resorts, Inc. (Cottonwood Cove) .....	Lake Mead NRA.
LACH003 .....	North Cascades Stehekin Lodge .....	North Cascades National Park Complex.

**EFFECTIVE DATE:** January 2, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Cynthia Orlando, Concession Program Manager, National Park Service, 1849 C Street, NW. (2410), Washington, DC 20240, Telephone 202/513-7144.

Dated: November 26, 2002.

**Richard M. Cripe,**

*Acting Associate Director, Administration, Workforce Development and Business Practices.*

[FR Doc. 02-32165 Filed 12-20-02; 8:45 am]

**BILLING CODE 4310-70-M**

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**Concession Contracts and Permits:  
Expiring Contracts; Extension**

**AGENCY:** National Park Service, Interior.

**ACTION:** Public notice.

**SUMMARY:** Pursuant to the terms of existing concession contracts, public notice is hereby given that the National Park Service intends to request a continuation of visitor services until December 31, 2003, or until such time as a new contract is awarded, whichever occurs sooner.

**SUPPLEMENTARY INFORMATION:** The contracts listed below have been

extended to the maximum allowable under 36 CFR 51.23. Under the provisions of current concession contracts and pending the development and public solicitation of a prospectus for a new concession contract, the National Park Service authorizes continuation of visitor services for a period not-to-exceed December 31, 2002, or until such time as a new contract is awarded, whichever occurs sooner, under the terms and conditions of current contracts as amended. The continuation of operations does not affect any rights with respect to selection for award of a new concession contract.

Concessioner ID No.	Concessioner name	Park
DEVA001 .....	Amfac Hotels & Resorts .....	Death Valley National Park.
DEVA002 .....	Amfac Hotels & Resorts .....	Death Valley National Park.

Concessioner ID No.	Concessioner name	Park
GOGA001 .....	Blue & Gold Fleet, LP .....	Golden Gate NRA.
GOGA008 .....	Louis' Restaurant .....	Golden Gate NRA.
LAME002 .....	Lakeshore Trailer Village .....	Lake Mead NRA.
LAME003 .....	Seven Resorts, Inc. (Lake Mead Resort) .....	Lake Mead NRA.
LAME005 .....	Forever Resorts, Inc. (Callville Bay) .....	Lake Mead NRA.
LAME006 .....	Las Vegas Boat Harbor .....	Lake Mead NRA.
LAME008 .....	Overton Beach Resort .....	Lake Mead NRA.
LAME010 .....	Seven Resorts, Inc. (Echo Bay Resort) .....	Lake Mead NRA.
MUWO001 .....	ARAMARK Leisure .....	Muir Woods National Monument.
OLYM001 .....	ARAMARK Corp. .....	Olympic National Park.
OLYM005 .....	Crescent West, Inc. .....	Olympic National Park.
OLYM008 .....	Sol Duc Hot Springs .....	Olympic National Park.

**EFFECTIVE DATE:** January 2, 2003.

**FOR FURTHER INFORMATION CONTACT:**  
Cynthia Orlando, Concession Program Manager, National Park Service, 1849 C Street, NW., (2410), Washington, DC, 20240, Telephone 202/513-7144.

Dated: November 26, 2002.

**Richard M. Cripe,**

*Associate Director, Administration, Workforce Development and Business Practices.*

[FR Doc. 02-32166 Filed 12-20-02; 8:45 am]

**BILLING CODE 4310-70-M**

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**Concession Contracts and Permits; Expiring Contracts; Extension**

**AGENCY:** National Park Service, Interior.

**ACTION:** Public notice.

**SUMMARY:** Pursuant to 36 CFR 51.23, notice is hereby given that the National Park Service intends to extend the following expiring concession contract for a period of up to 3 years, or until such time as a new contract is awarded, whichever occurs sooner.

**SUPPLEMENTARY INFORMATION:** The concession authorization expires on its

terms in 2002. The National Park Service has determined that the proposed 3-year extension is necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. This extension will allow the National Park Service to complete a Commercial Services Plan for a new and expanded concession development, and to develop a prospectus leading to competitive selection for a new long-term concession contract that will be consistent with the to-be-determined decisions of the Commercial Services Plan.

Concessioner ID No.	Concessioner name	Park
LAVO001 .....	California Guest Services, Inc .....	Lassen Volcanic National Park.

**EFFECTIVE DATE:** January 2, 2003.

**FOR FURTHER INFORMATION CONTACT:**  
Cynthia Orlando, Concession Program Manager, National Park Service, 1849 C Street, NW., (2410), Washington, DC 20240, Telephone 202/513-7144.

Dated: November 26, 2002.

**Richard M. Cripe,**

*Associate Director, Administration, Workforce Development and Business Practices.*

[FR Doc. 02-32167 Filed 12-20-02; 8:45 am]

**BILLING CODE 4310-70-M**

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**Concession Contracts and Permits; Expiring Contracts; Extension**

**AGENCY:** National Park Service, Interior.

**ACTION:** Public notice.

**SUMMARY:** Pursuant to 36 CFR 51.23, notice is hereby given that the National Park Service intends to extend the following expiring concession contracts for a period of up to 2 years, or until such time as a new contract is awarded, whichever occurs sooner.

**SUPPLEMENTARY INFORMATION:** All of the listed concession authorizations will expire on December 31, 2002. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to develop prospectuses leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Concessioner ID No.	Concessioner name	Park
LAME007 .....	Lake Mohave Resort .....	Lake Mead NRA.
LAME009 .....	Temple Bar Resort .....	Lake Mead NRA.

**EFFECTIVE DATE:** January 2, 2003.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Orlando, Concession Program Manager, National Park Service, 1849 C Street, NW. (2410), Washington, DC 20240, Telephone 202/513-7144.

Dated: November 26, 2002.

**Richard M. Cripe,**

*Acting Associate Director, Administration, Workforce Development and Business Practices.*

[FR Doc. 02-32168 Filed 12-20-02; 8:45 am]

**BILLING CODE 4310-70-M**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### **Environmental Statements; Notice of Intent: Canaveral National Seashore, FL; General Management Plan**

**AGENCY:** National Park Service.

**ACTION:** Notice of intent to prepare a draft environmental impact statement for the general management plan for Canaveral National Seashore, Titusville, Florida.

**SUMMARY:** Pursuant to section 102 (2)(c) of the National Environmental Policy Act of 1969 and the National Park Service (NPS) Director's Orders 2 and 12, the NPS will prepare a Draft Environmental Impact Statement (EIS) for the General Management Plan for Canaveral National Seashore. The EIS will assess potential environmental impacts associated with various types and levels of visitor use and resource management within the Seashore. Some of the issues include: Developing adequate facilities for interpretation and visitor protection; Addressing increased visitation; Protection of vulnerable aquatic resources; Assessing transportation and picnicking needs; Considering and assessing cooperative ventures with civic and academic and government entities; Evaluating the adaptive use of former retained use estates.

**DATES:** The NPS will conduct public scoping meetings in the local area (Titusville or New Smyrna Beach) to receive input from interested parties on issues, concerns, and suggestions pertinent to the management of Canaveral National Seashore. Suggestions and ideas for managing the cultural and natural resources and visitor experiences at Canaveral National Seashore are encouraged. Locations, dates, and times of public scoping meetings will be published in local newspapers and may also be obtained by contacting the park. This information will also be published on

the General Management Plan web site for Canaveral National Seashore at <http://www.nps.gov/cana>. The comment period for each of these meetings will be announced at the meetings and will be published on the Canaveral National Seashore General Management Plan Web site at <http://www.nps.gov/cana>.

**ADDRESSES:** Scoping suggestions should be submitted to the following address to ensure adequate consideration by the Service: Superintendent, Canaveral National Seashore, 308 Julia Street, Titusville, FL 32796.

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Canaveral National Seashore, 308 Julia Street, Titusville, FL 32796. Telephone: (321) 267-1110.

**SUPPLEMENTARY INFORMATION:** A General Management Plan was completed for Canaveral National Seashore in 1981. Many changes have occurred since that time and the plan is in need of revision. Several new areas have been opened for visitation and the park is facing critical issues not addressed in the 1981 General Management Plan. The Draft and Final General Management Plan and Environmental Impact Statement will be made available to all known interested parties and appropriate agencies. Full public participation by federal, state, and local agencies, as well as other concerned organizations and private citizens, is invited throughout the preparation process of this document.

Our practice is to make the public comments we receive in response to planning documents, including names and home addresses of respondents, available for public review during regular business hours. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. Anonymous comments will be included in the public record. However, the National Park Service is not legally required to consider or respond to anonymous comments. We will make all submissions from organizations or businesses, including individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The responsible official for this Environmental Impact Statement is Jerry Belson, Regional Director, Southeast Region, National Park Service, 100 Alabama Street SW, 1924 Building, Atlanta, Georgia 30303.

Dated: September 6, 2002.

**W. Thomas Brown,**

*Acting Regional Director, Southeast Region.*

[FR Doc. 02-32169 Filed 12-20-02; 8:45 am]

**BILLING CODE 4310-70-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### **Environmental Impact Statements, Dayton Aviation Heritage National Historical Park, Ohio**

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice of intent to prepare an environmental impact statement for the general management plan amendment for Dayton Aviation Heritage National Historical Park, Ohio.

**SUMMARY:** Under the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the National Park Service (NPS) is preparing an environmental impact statement (EIS) for the general management plan amendment for Dayton Aviation Heritage National Historical Park (DAAV). This effort will result in a comprehensive general management plan that encompasses preservation of natural and cultural resources, visitor use and interpretation, roads, and facilities. In cooperation with the United States Air Force at Wright-Patterson Air Force Base (WPAFB), attention will also be given to resources outside the boundaries of DAAV that affect the integrity of DAAV. Major issues to be addressed in the EIS include boundary adjustments in three geographic areas; motorized vehicle access between the Wright Memorial and Huffman Prairie Flying Field; management of resources in The Wright Cycle Company complex; the most appropriate designation for the Paul Laurence Dunbar House site; and DAAV/partnership staffing, responsibility, and functions.

**DATES:** The NPS will accept comments through February 6, 2003.

**ADDRESSES:** Information will be available for public review and comment in the office of the Superintendent, Dayton Aviation Heritage National Historical Park, 22 South Williams Street, Dayton, Ohio 45409.

**FOR FURTHER INFORMATION CONTACT:** Larry Blake, Superintendent, Dayton Aviation Heritage National Historical Park, PO Box 9280, Wright Brothers Station, Dayton, OH 45409, (937) 225-7705.

**SUPPLEMENTARY INFORMATION:** The Wright Cycle Company Complex includes The Wright Cycle Company building, the Wright-Dunbar Interpretive Center, the Aviation Trail Visitor Center, and two historic residential structures. Several boundary adjustments have been suggested to facilitate and improve the management and functionality of DAAV.

There are 84.41 acres within the actual limits of the Huffman Prairie Flying Field. The flying field and surrounding lands are owned by the U.S. Air Force and are part of WPAFB. It may be appropriate to expand the boundaries of DAAV at this site to facilitate management and improve access and interpretation. Expansion or modification of the existing boundaries would require amendment of DAAV's authorizing legislation by Congress. The 27-acre Wright Memorial is on WPAFB and is not within the current boundaries established for DAAV. However, DAAV's authorizing legislation states, "the Secretary may provide interpretation of Huffman Prairie Flying Field on Wright Brothers Hill, Wright-Patterson Air Force Base, Ohio." Through an agreement with the Air Force, the NPS will staff and provide interpretive exhibits and programming at the Huffman Prairie Flying Field Interpretive Center, an Air Force facility constructed on Wright Brothers Hill. Possible boundary change options in this area could include, but may not be limited to: expanding DAAV to include the entire 27-acre Wright Memorial site; expanding DAAV to include only the portion of the site that includes the visitor center; and expanding DAAV to include additional lands outside of the Wright Memorial in the vicinity of the southwest end of the proposed Gateway Project. Expansion or modification of the existing boundaries would require amendment of DAAV's authorizing legislation by Congress. Huffman Prairie Flying Field currently is within a secure area of WPAFB. The general management plan amendment will consider alternatives for providing access to Huffman Prairie Flying Field and for linking the interpretive center at the Wright Memorial with the flying field site. Alternatives could range from no additional action to constructing any one of six proposed configurations for the Gateway Project, which could include a bridge across State Route 444 and Kauffman Avenue.

The general management plan amendment will investigate the most appropriate designation to convey the Paul Laurence Dunbar story.

Although Dunbar was a friend of the Wright brothers and a classmate of

Orville Wright, he had little connection with the development of aviation in Dayton. Moreover, DAAV's ability to present Dunbar's importance as the first African-American to gain widespread recognition for his literary accomplishment may be obscured by the aviation theme of the remainder of DAAV. The NPS is committed to ensuring the protection, preservation, and interpretation of Paul Laurence Dunbar's home as a unit of the National Park System and is interested in determining the designation that will most effectively assist the NPS, in partnership with the Ohio Historical Society in achieving that objective. Options could include continuing the site's current status as part of the DAAV, or designating a separate Paul Laurence Dunbar National Historic Site. In the latter case, the general management plan amendment will determine if the site should be administered in conjunction with or separately from DAAV.

Adjacent to the Wright Cycle Company, at 26 and 30 South Williams Street, are two historic houses owned by the city of Dayton. The City Commission has voted to donate these properties to DAAV and DAAV is now working with the city to complete the legal transfer. While the people who lived at 26 South Williams were neighbors and documented acquaintances of the Wright brothers, the house and family do not have critical significance related to the Wright brothers' story. The general management plan amendment will address whether the structure should be rehabilitated or restored, and establish the most appropriate use.

The house at 30 South Williams Street has been rehabilitated by the city of Dayton and, as an interim use, is serving as the DAAV headquarters and offices for the Dayton Aviation Heritage Commission. The general management plan amendment will address the structure's most appropriate use after operational activities move to the Hoover Block.

The NPS has multiple partners in the ownership and operation of DAAV. The general management plan amendment will evaluate alternatives for responsibilities and functions, potentially including staffing issues, with the U.S. Air Force, Ohio Historical Society, Carillon Historical Park, and Aviation Trail, Inc.; ensuring security at WPAFB; and providing space for storage and maintenance at the Wright Cycle Company/Hoover Block Complex. Additional issues to be addressed in the EIS may be identified during the scoping process. Federal, State, and local agencies, individuals, and organizations are invited to participate

in the scoping process. That process includes:

Identification of potential issues. Identification of potential impact topics, and topics to be analyzed in depth.

Determination of potential cooperating agencies and assignment of responsibilities.

Public scoping will begin in September. Public notice of scoping processes such as meetings and open houses will be issued. A newsletter will be prepared which details the issues identified to date. Copies of the newsletter may be obtained from Superintendent, Dayton Aviation Heritage National Historical Park, 22 South Williams Street, Dayton, Ohio 45509.

If you wish to comment on the scoping newsletter or on any other issues associated with the plan, you may submit your comments by any one of several methods. You may mail comments to Superintendent, Dayton Aviation Heritage National Historical Park, PO Box 9280, Wright Brothers Station, Dayton, OH 45409. You may also comment via the Internet to [DAAV\\_GMPA@nps.gov](mailto:DAAV_GMPA@nps.gov). Please also include your name and return address in your Internet message. Request a return receipt when you prepare your message and a confirmation should be forwarded back when your message is received. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (937) 225-7705 and ask for Ann Honious. Finally, you may hand-deliver comments to 22 South Williams Street, Dayton, Ohio. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours.

Individual respondents may request we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, 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 inspection in their entirety.

Dated: October 22, 2002.

**William W. Schenk,**

*Regional Director, Midwest Region.*

[FR Doc. 02-32170 Filed 12-20-02; 8:45 am]

**BILLING CODE 4310-70-P**

**DEPARTMENT OF THE INTERIOR****National Park Service****Notice of Availability of Draft Director's Order Concerning National Park Service Policy and Procedures for Floodplain Management.**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The National Park Service (NPS) has prepared a draft Director's Order that provides policy and procedures in compliance with Executive Order 11988 (Floodplain Management) for implementing floodplain protection and management actions in units of the National Park System. Executive Order 11988 requires that each agency develop agency-specific guidance for floodplain management. This draft Director's Order will replace all previously issued NPS floodplain management guidance and related instructions. The draft Director's Order maintains the existing NPS policy of preserving floodplain values and minimizing potentially hazardous conditions associated with flooding. When adopted, the policy and procedures will apply to all units and programs of the national park system. **DATES:** Written comments will be accepted until February 21, 2003. **ADDRESSES:** Submit comments to Gary Smillie via e-mail at [gary\\_smillie@nps.gov](mailto:gary_smillie@nps.gov); or via ground mail at 1201 Oakridge Drive, Fort Collins, CO 80525; or via telefax at 970-225-9965.

**FOR FURTHER INFORMATION CONTACT:** This Director's Order (D.O.) and a companion procedural manual will replace floodplain management guidance issued in 1993 for implementing Executive Order 11988, Floodplain Management. Procedures and policies provided in this draft D.O. have been modified and updated but remain similar to the 1993 guidance document. The draft D.O. is consistent with existing requirements, Department of the Interior policy, and the 2001 edition of the NPS Management Policies.

This D.O. will help Park Service field managers meet their responsibilities for implementing the requirements of Executive Order 11988, Floodplain Management. The D.O. will also clarify the responsibilities of key NPS personnel in implementing the floodplain policies and procedures.

Executive Order 11988 requires each agency to have regulations or procedures in place to explain how the agency will pursue the non-hazardous use of floodplains. Because

inappropriate floodplain use and development can jeopardize health and safety and result in costly property damage and the loss of important habitat, the Executive Order requires agencies to provide leadership and take action to reduce the risk of flood loss; minimize the impacts of floods; and restore and preserve natural floodplains.

The draft Director's Order and the companion procedural manual (Procedural Manual 77-2) may be viewed on the Internet at [www.nps.gov/policy/DOrders/75A.htm](http://www.nps.gov/policy/DOrders/75A.htm) and [www.nature.nps.gov/manual77-22](http://www.nature.nps.gov/manual77-22), respectively. Printed copies may also be requested by contracting Gary Smillie at the address given above.

There may be circumstances in which we would withhold from the record an individual commenter's identity, 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.

**SUPPLEMENTARY INFORMATION:** Gary Smillie at 970-225-3522.

Dated: November 26, 2002.

**Michael Soukup,**

*Associate Director for Natural Resource Stewardship and Science.*

[FR Doc. 02-32239 Filed 12-20-02; 8:45 am]

**BILLING CODE 4310-70-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 November 23, 2002. 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 by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, (202) 343-1836.

Written or faxed comments should be submitted by January 7, 2003.

**Carol D. Shull,**

*Keeper of the National Register of Historic Places.*

**ARKANSAS****Cross County,**

Wittsburg Fortification, (Little Rock Campaign of 1863 MPS), Address Restricted, Wittsburg, 02001626.

**Ouachita County,**

Tate's Bluff Fortification, (Little Rock Campaign of 1863 MPS), Address Restricted, Tate's Bluff, 02001628.

**Pulaski County,**

Bayou Meto (Reed's Bridge) Battlefield, (Little Rock Campaign of 1863 MPS), AR 161 at Bayou Meto, Jacksonville, 02001627.

**Van Buren County,**

Damascus CCC Camp, Co. No. 3781 Historic District, Camp Hill Rd., Damascus, 02001631.

**CONNECTICUT****New Haven County**

Northford Center, Roughly along Middletown Ave. and parts of Old Post Rd., North Branford, 02001629  
Platt, Col. Asa, House, 2 Tyler City Rd., Orange, 02001630.

**GEORGIA****Carroll County,**

North Villa Rica Commercial Historic District, Roughly bounded by Southern Railroad, North Ave., and East Gordon and West, Church Sts., Villa Rica, 02001635.

**Clarke County,**

Athens Manufacturing Company, 585 White Circle, Athens, 02001634.

**Decatur County,**

Allen Mercantile Company, 102 Main St., Climax, 02001632.

**Lowndes County**

Valdosta Commercial Historic District (Boundary Increase), Roughly bounded by Valley, Lee, and Toombs Sts. and Crane Ave., Valdosta, 02001633.

**LOUISIANA****Vernon Parish,**

Smart, Edmond Ellison, House, 301 S. 1st St., Leesville, 02001636.

**NEW YORK****Broome County,**

Building at 171-177 Clinton Street, 171-177 Clinton St., Binghamton, 02001641.

**Cayuga County,**

First Baptist Church of Weedsport, (Historic Designed Landscapes of Syracuse MPS), Liberty St., Weedsport, 02001640,

**Cortland County,**

Union Valley Congregational Church, Union Valey Cross Rd., Taylor, 02001639.

**Delaware County,**

Sherwood Family Estate, 484 Sherwood Rd.,  
Dehli, 02001648.  
Stratton, Walter, House, New Kingston  
Mountain Rd., Roxbury, 02001660.

**Greene County,**

IOOF Hall, 6325 Main St., Hunter, 02001642.

**Monroe County,**

Tall Maples Miniature Golf Course, 4083  
Culver Rd., Sea Breeze, 02001653.

**Montgomery County,**

Frey House, NY 5, Palatine Bridge, 02001644.  
Nelliston School, Stone Arabia St., Nelliston,  
02001645.

**Niagara County,**

North Ridge United Methodist Church,  
(Cobblestone Architecture of New York  
State MPS), 3930 North Ridge Rd., North  
Ridge, 02001649.

**Onondaga County,**

Onondaga Park, (Historic Designed  
Landscapes of Syracuse MPS), Roughly  
bounded by Roberts Ave., Crosett St.,  
Onondaga Ave. and W. Colvin, St.;  
Onondaga and South Ave., and Onondaga  
St., Syracuse, 02001657.

**Ontario County,**

Huffman, William, Cobblestone House,  
(Cobblestone Architecture of New York  
State MPS), 1064 Townline Rd., Phelps,  
02001647.

**Rockland County,**

Dederer Stone House—Stonehurst, 82  
Rockland Rd., Orangetown, 02001650.  
Sayler, Michael, Stone House, Blue Hill Rd.,  
Orangetown, 02001654.

**Schoharie County,**

Gallupville Evangelical Lutheran Church,  
980 NY 443, Gallupville, 02001652.  
Old Stone Fort, 145 Fort Rd., Schoharie,  
02001643.

**Seneca County,**

First Baptist Church of Interlaken, 8414 Main  
St., Interlaken, 02001655.  
Hoster, William, House, 3832 NY 414,  
Fayette, 02001662.

**Tioga County,**

Halsey Valley Grand Army of the Republic  
Meeting Hall, Hamilton Valley Rd., Tioga  
Center, 02001646.

**Ulster County,**

Terwilliger—Smith Farm, 160 Cherrytown  
Rd., Rochester, 02001658.

**Wayne County,**

East Palmyra Presbyterian Church, 2102  
Whitbeck Rd., East Palmyra, 02001651.

**Westchester County,**

Wildcliff, 42 Wildcliff Rd., New Rochelle,  
02001656.

**NORTH CAROLINA**

Buncombe County, West End Historic  
District, Roughly bounded by Club, Trade,  
Roberts Sts., and Park Ave., Asheville,  
02001664.

**Cleveland County,**

East Marion—Belvedere Park Historic  
District, Roughly bounded by Cline,  
Chestnut, E. Marion Sts., Edgemont Ave,  
Belvedere Aves., and Elizabeth Rd.,  
Shelby, 02001667.

**Forsyth County,**

Downtown North Historic District, Roughly  
bounded by W. Fifth, W. Eighth, N. Main  
and N. Cherry Sts., Winston-Salem,  
02001669.

Oak Grove School, Oak Grove Circle, 0.3 mi.  
E of jct. with Bethabara Rd., Winston-  
Salem, 02001668.

**Guilford County,**

Wadsworth Congregational Church, 1301  
Rock Creek Dairy Rd., Whitsett, 02001659.

**Henderson County,**

Lenox Park Historic District, (Hendersonville  
MPS). Roughly bounded by Allen, Spring,  
and S. Whitted Sts., and Southern RR.,  
Hendersonville, 02001661.

**Hertford County,**

Parker, King, House, 304 Mount Moriah Rd.,  
Winton, 02001663.

**OREGON****Multnomah County,**

Rae Selling Berry Garden and House, 11505  
SW Summerville Ave., Portland, 02001637.

**Polk County,**

Beulah Methodist Episcopal Church, 242  
North Main, Falls City, 02001638.

**VIRGINIA****Frederick County,**

Homespun, 949 Cedar Creek Grade,  
Winchester, 02001671.

**Hanover County,**

Spring Green, 2160 Old Church Rd.,  
Mechanicsville, 02001672.

**Richmond Independent city,**

Union Hill Historic District, Roughly 20th,  
21st, 22nd, 23rd, 24th 25th, Jessamine,  
Pink, Burton, Carrington, Cedar, Clay,  
Jefferson, Leigh, M, O, Sts, Richmond  
(Independent City), 02001670.

**WISCONSIN****Jefferson County,**

Hebron Town Hall, W3087 Green Isle Dr.,  
Hebron, 02001666.

**Kenosha County,**

Alford Park Warehouse, 1885 Sheridan Rd.,  
Kenosha, 02001665.

[FR Doc. 02-32171 Filed 12-20-02; 8:45 am]

**BILLING CODE 4310-70-P**

**DEPARTMENT OF THE INTERIOR****National Park Service****National Register of Historic Places;  
Notification of Pending Nominations**

Nominations for the following  
properties being considered for listing  
in the National Register were received  
by the National Park Service before  
December 7, 2002. 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 by United States Postal  
Service, to the National Register Historic  
Places, National Park Service, 1849 C  
St., NW., 2280, Washington, DC 20240;  
by all other carriers, National Register of  
Historic Places, National Park Service,  
1201 Eye St., NW., 8th floor,  
Washington DC 20005; or by fax, 202-  
343-1836. Written or faxed comments  
should be submitted by January 7, 2003.

**Beth L. Savage,**

*Acting Keeper of the National Register of  
Historic Places.*

**CONNECTICUT****Litchfield County**

Water Street Historic District, Roughly along  
Water St., from Church St. to Prospect St.,  
Torrington, 02001698.

**INDIANA****Wayne County**

Reeveston Place Historic District, Bounded  
by South B, South E, South 16th and S.  
23rd Sts., Richmond, 02001699.

**KANSAS****Atchison County**

Campbell Chapel AME Church, 715 Atchison  
St., Atchison, 02001701.

**Hamilton County**

Menno Community Hall, (New Deal-Era  
Resources of Kansas MPS) NE4, NE4, NE4,  
NE4, S. 15, T. 26S, R. 49W, Kendall,  
02001700.

**Sedgwick County**

International Harvester Building, 355 N. Rock  
Island Ave/803-811 E. Third St., Wichita,  
02001702.

**MINNESOTA****Cass County**

Conservation Building (Federal Relief  
Construction in Minnesota MPS AD), 205  
Minnesota Ave., Walker, 02001706.

**Otter Tail County**

Craigie Flour Mill Historical Marker (Federal  
Relief Construction in Minnesota MPS  
AD), MN 78 at Balmoral Cr., Otter Tail  
Township, 02001704.

**Scott County**

Maka Yusota, Address Restricted, Savage, 02001703.

**Stevens County**

West Central School of Agriculture and Experiment Station Historic District, 600 E. Fourth St., Morris, 02001707.

**Wabasha County**

Walnut Street Bridge, W end of Walnut St., Mazeppa, 02001705.

**MISSOURI****St. Louis Independent City**

DeHodiamont, Emmanuel, House, 951 Maple Place, St. Louis (Independent City), 02001708.

**NEW YORK****Greene County**

Strong, Elijah, House, 12278 NY 23, Ashland, 02001711.

**Rensselaer County**

Fire Alarm, Telegraph and Police Signaling Building, 67 State St., Troy, 02001714.

**Sullivan County**

German Presbyterian Church and Hortonville Cemetery, CR 121 and CR 131, Hortonville, 02001712.

**Tioga County**

Tioga Centre General Store, 3019 NY 17C, Tioga Center, 02001709.

**NORTH CAROLINA****Bertie County**

Elmwood, 637 Avoca Farm Rd., Merry Hill, 02001710.

**Duplin County**

Wakefield Dairy Complex, (Wake County MPS), W side Falls of Neuse Rd., 1.2 mi. N of Neuse R., Wake Forest, 02001719.

**Lincoln County**

South Aspen Street Historic District, 500–1000 blks. S. Aspen St., 114–130 E. Rhodes St., and 624–636 W. Park Dr., Lincolnton, 02001713.

**West Main Street Historic District,**

200–300 W. Main St. and 114 N. High St., Lincolnton, 02001716.

**Mecklenburg County**

Alexander, William T., House, (Mecklenburg County MPS), Mallard Cr. Church Rd., 1 mi W. of Jct. with U.S. 29, Charlotte, 02001718.

**Perquimans County**

Winfall Historic District, Roughly along Main St. and Wiggins Rd., Winfall, 02001715.

**Rowan County**

Barber Farm, 225 Redmon Rd., Cleveland, 02001717.

**PUERTO RICO****Jayuya Municipality**

La Piedra Escrita, (Prehistoric Rock Art of Puerto Rico MPS), Address Restricted,

Jayuya City, Coabey Ward, Boqueron S, 02001720.

A request for removal has been made for the following resources:

**MINNESOTA****Benton County**

Ronneby Charcoal Kiln, (Benton County MRA), Off MN 23, Ronneby, 82002934.

**Le Sueur County**

Patten, David, Farmhouse, (Ottawa Stone Buildings TR), Liberty St., Ottawa, 82004706.

[FR Doc. 02–32172 Filed 12–20–02; 8:45 am]

**BILLING CODE 4310–70–P**

**DEPARTMENT OF THE INTERIOR****National Park Service****National Register of Historic Places; Notification of Pending Nominations**

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 30, 2002. 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 by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–343–1836. Written or faxed comments should be submitted by January 7, 2003.

**Carol D. Shull,**

*Keeper of the National Register of Historic Places.*

**ARKANSAS****Ashley County**

Crossett Post Office, 125 Main St., Crossett, 02001673.

**Craighead County**

Westbrooke, Edward L., Building, 505 Union St., Jonesboro, 02001675.

**Poinsett County**

Willie Lamb Post No. 26 American Legion Hut, 205 Alexander St., Lepanto, 02001674.

**CONNECTICUT****Fairfield County**

March Route of Rochambeau's Army: Reservoir Road, (Rochambeau's Army in Connecticut, 1780–1782 MPS), Jct. of Reservoir Rd and Mt. Pleasant Rd. S, Newtown, 02001679.

**New Haven County**

Ward—Heitman House, 277 Elm St., West Haven, 02001691.

**Tolland County**

March Route of Rochambeau's Army: Bailey Road, (Rochambeau's Army in Connecticut, 1780–1782 MPS), Bailey Rd., Bolton, 02001677.

**Windham County**

Fourth Camp of Rochambeau's Army, (Rochambeau's Army in Connecticut, 1780–1782 MPS), Address Restricted, Windham, 02001680.

March Route of Rochambeau's Army: Manship Road-Barstow Road, (Rochambeau's Army in Connecticut, 1780–1782 MPS), Manship Rd., Barstow Rd. from jct. with Manship Rd. to Westminster Rd., Canterbury, 02001678.

**FLORIDA****Manatee County**

Richardson House, 1603 1st Ave. W, Bradenton, 02001676.

**MISSOURI****Jackson County**

Kansas City Power and Light Company Building, 1330 Baltimore Ave., Kansas City, 02001696.

Long, R.A., Building, 928 Grand Blvd., Kansas City, 02001683.

**St. Louis County**

Henry Avenue Historic District, 120, 210, 211, 218, 220, 226, 230, 310, 314, 320 and Henry Ave., Manchester, 02001692.

**St. Louis Independent City**

South Side National Bank, 3606 Gravois Ave., St. Louis (Independent City), 02001697.

**MONTANA****Lewis and Clark County**

Regan, Thomas P., Cabin, McDonald Pass, Helena, 02001686.

**New Mexico****Union County**

Goodson Memorial School, (New Deal in New Mexico MPS), NM 456, approx. 4 mi. W of jct. with NM 406, Seneca, 02001693.

**OHIO****Richland County**

Raemelon Farm Historic District, Bounded by Marion Ave., Millsboro and Trimble Rds., Mansfield, 02001682.

**Trumbull County**

Jones, Elam, Public House, 3365 OH 7, Hartford, 02001687.

**WEST VIRGINIA****Berkeley County**

Pitzer, Elias, House, 1076 Clyde Borum Rd., Martinsburg, 02001689.

Rees, Morris, III House, WV 24, 0.2 mi. S of WV 51, Garrardstown, 02001681.



**Preston County**

Indian Rocks Dining Hall, WV 7, 1 mi. E of Reedsville, Reedsville, 02001688.

**Wood County**

Fort Boreman, Address Restricted, Parkersburg, 02001690.

**WISCONSIN****Kenosha County**

Southport Beach House, 7825 First Ave., Kenosha, 02001684.

In order to aid in the preservation of the following resource(s) the comment period has been shortened to three days:

**CONNECTICUT****New Haven County**

Andrew, William, House, 131 Old Tavern Rd., Orange, 001695.

**MISSOURI****Greene County**

Wise Feed Company Building, 438-440 S. Campbell Ave., Springfield, 02001685.

In order to aid in the preservation of the following resource(s) the comment period has been waived:

**FLORIDA****Palm Beach County**

Eastover, 1100 S. Ocean Blvd., Manalapan, 02001694.

[FR Doc. 02-32173 Filed 12-20-02; 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 U.S. Department of the Interior, Bureau of Reclamation, Central Arizona Project Repository, Tucson, AZ, and in the Control of the U.S. Department of the Interior, Bureau of Reclamation, Phoenix Area Office, Phoenix, AZ; Correction**

**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), 25 U.S.C. 3003, Sec. 5, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of the Interior, Bureau of Reclamation, Central Arizona Project Repository, Tucson, AZ, and in the control of the U.S. Department of the Interior, Bureau of Reclamation, Phoenix Area Office, Phoenix, AZ.

This notice is published as part of the National Park Service's administrative

responsibilities under NAGPRA, 25 U.S.C. 3003, Sec. 5 (d)(3). 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.

This notice corrects the minimum number of individuals and the number of associated funerary objects reported in a previous Notice of Inventory Completion, published February 27, 2002, and a correction to that notice, published July 9, 2002. A review of Bureau of Reclamation, Central Arizona Project Repository collections revealed the presence of additional Native American human remains representing 2 individuals and 30 additional associated funerary objects, all culturally affiliated with the same tribes listed in the original notice.

In the Federal Register of February 27, 2002 (FR doc. 2-4580, pages 8996-9002) paragraph numbers 74 and 76 are corrected by substituting the following paragraphs:(Paragraph 74) Between 1985 and 1986, during legally authorized data recovery efforts undertaken by Northland Research for the Bureau of Reclamation, human remains representing nine individuals were recovered from the Hind site, AZ AA:1:62(ASM), in the lower Santa Cruz Valley in Pinal County, AZ. No known individuals were identified. The 121 associated funerary objects are 1 reconstructed Snaketown Red/Buf bowl; 1 reconstructable Estrella Red/Grey bowl; 1 Sweetwater Red/Grey scoop; 5 partially reconstructed plainware bowls; 2 partially reconstructed plainware jars; 1 partially reconstructed indeterminate vessel; 25 bags of sherds; 35 ground stone shell-working tools; 1 polishing stone; 2 projectile points; 9 bags of chipped stone; 4 bags of worked shell (including 1 shell bracelet fragment, 1 partial shell pendant, and worked fragments); 1 bag of unworked shell fragments; 3 bags of unworked faunal bone fragments; and 30 flotation, pollen, and C-14 samples.

(Paragraph 76) Between 1985 and 1986, during legally authorized data recovery efforts undertaken by Northland Research for the Bureau of Reclamation, human remains representing 97 individuals were recovered from the Shelltown site, AZ AA:1:66(ASM), in the lower Santa Cruz Valley in Pinal County, AZ. No known individuals were identified. The 503 associated funerary objects are 23 ceramic vessels (2 miniature bowls, 3 miniature jars, 2 complete or partially

reconstructed bowls, and 16 partial or complete jars); 4 worked sherds; 1 nose/ear spool; 1 possible figurine fragment; 108 bags of sherds; 1 stone bowl; 3 ground stone axes; 2 plummets; 4 manos; 1 ground stone bead; 10 ground stone shell-working tools; 1 stone jar cover; 15 ground stone fragments; 3 projectile points; 62 bags of chipped stone; 25 bags of worked shell (including 5 bracelet fragments, 2 caches of damaged shell bracelets, 11 pendants, 2 rings, and 5 bags of worked shell fragments); 17 bags of unworked shell fragments; 15 bags of worked faunal bone (including 2 bone hair pins, 5 bone awl fragments, 5 bone tubes, and 3 bags of worked bone fragments); 65 bags of unworked faunal fragments; and 145 flotation, pollen, mineral, and C-14 samples.

In the Federal Register of July 9, 2002 (FR doc. 02-17086, pages 45539-45540) paragraph number 12, which was a correction to paragraph 86 of the February 27, 2002, Notice of Inventory Completion, is corrected by substituting the following paragraph:(Paragraph 12) (Paragraph 86) Based on previously reviewed affiliation information, officials of the Bureau of Reclamation have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (9-10), the human remains listed above, represent the physical remains of a minimum of 485 individuals of Native American ancestry. Officials of the Bureau of Reclamation also have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (3)(A) the 3299 items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bureau of Reclamation have determined that, pursuant to U.S.C. 3001, Sec. 2 (2), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Ak-Chin Indian Community of the Maricopa (Ak-Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; 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 and associated funerary objects should contact in writing Jon Czaplicki or Bruce Ellis, Bureau of Reclamation, Phoenix Area Office, PO Box 81169, Phoenix, AZ 85069-1169, telephone (602) 216-3862, before January 22, 2003.

Repatriation of the human remains and associated funerary objects to the Ak-Chin Indian Community of the Maricopa (Ak-Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; 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.

The Bureau of Reclamation is responsible for notifying the Ak-Chin Indian Community of the Maricopa (Ak-Chin) Indian Reservation, Arizona; Chemehuevi Indian Tribe of the Chemehuevi Indian Reservation, California; Cocopah Tribe of Arizona; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Ft. McDowell Yavapai Nation, Arizona; Ft. Mohave Indian Tribe of Arizona, California & Nevada; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Pascua Yaqui Tribe of Arizona; Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tohono O'odham Nation of Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico, that this notice has been published.

Dated: October 10, 2002

**Robert Stearns,**

*Manager, National NAGPRA Program.*

[FR Doc. 02-32177 Filed 12-20-02; 8:45 am]

BILLING CODE 4310-70-S

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Notice of Intent to Repatriate Cultural Items: University of Nevada, Las Vegas, Marjorie Barrick Museum of Natural History, Las Vegas, NV

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, Sec. 7, of

the intent to repatriate cultural items in the possession of the University of Nevada, Las Vegas, Marjorie Barrick Museum of Natural History that meet the definition of "sacred objects" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003, Sec. 5 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The four cultural items are Hopi Kachina Dance Masks: Heheyah from First Mesa (catalog 11379), Tasavuh (catalog 11380), Sitononoh (catalog 11381), and Heheyah (catalog 11382).

In 1975, the Marjorie Barrick Museum acquired the masks through a donation from Dr. Gary Troyer, a private collector. No information regarding the collector's acquisition is known.

Accession records from the Marjorie Barrick Museum indicate that these masks are of Hopi origin. Consultation evidence presented by the Katsinmongwi (Kachina Priest) of the Hopi tribe and Hopi religious leaders indicate that these objects are sacred and are used by the present-day Katsinmongwi for the practice of the Hopi religion. Society Priests assert that they are the rightful custodians of these items, as the masks require special care, which can only be provided by the Katsinmongwi.

Officials of the Marjorie Barrick Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (3)(C), these cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Marjorie Barrick Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001, Sec. 2(2), there is a relationship of shared group identity that can reasonably be traced between these sacred objects and the Hopi Tribe of Arizona.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Kate Hahn, Marjorie Barrick Museum of Natural History, 4505 Maryland Parkway, Las Vegas, Nevada, 89154-4012, telephone (702) 895-3381, before January 22, 2003. Repatriation of these objects to the Hopi Tribe of Arizona may begin after that date if no additional claimants come forward.

The Marjorie Barrick Museum of Natural History is responsible for notifying the Hopi Tribe of Arizona that this notice has been published.

Dated: November 5, 2002

**Robert Stearns,**

*Manager, National NAGPRA Program.*

[FR Doc. 02-32176 Filed 12-20-02; 8:45 am]

BILLING CODE 4310-70-S

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Notice of Intent to Repatriate Cultural Items: Williamson Museum, Northwestern State University, Natchitoches, LA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, Sec. 7, of the intent to repatriate cultural items in the possession of the Williamson Museum, Northwestern State University, Natchitoches, LA, that meet the definition of "unassociated funerary objects" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003, Sec. 5 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal Agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

In 1959-1960, Dr. Clarence H. Webb excavated approximately 32 graves at the Colfax Ferry site (16-NA-15), Rapids Parish, LA. Most of the human remains were left in situ. Dr. Webb donated some of the unassociated funerary objects to the Williamson Museum in two separate gifts, one in 1961 and the second in 1991. Much of the first donation was destroyed by fire in 1965. The 668 unassociated funerary objects remaining in the Williamson Museum collection are 10 coffin nails, 5 coffin fragments, 4 sherds of European pottery (blackware, blue-edged ware, or creamware), 1 Colono-ware pot sherd, 2 clay pipes, 1 French glass bottle, 1 glass lens fragment (possibly from eyeglasses), 487 glass trade beads, 11 brass or copper bracelets, 1 brass button, 6 brass trigger guard fragments, 23 cut brass fragments (7 with perforations), 1 cupreous object, 9 knives (butcher or clasp), 5 spoons, 4 pairs of scissors, 13 crushed cans, 39 nails, 1 spike, 2 pounds of nail fragments, 1 iron tripod,

2 iron kettle fragments, 2 wrought iron bars, 1 iron wedge, 4 iron rods (possibly ramrods), 2 bags of iron fragments, 1 rust fragment, 1 lead bar, 4 silver ear ornaments, 1 silver nose ring, 1 military hat plate (ca. 1812-1820), 15 triangular silver ornaments, 5 silver disks, 1 worked silver strip (perforated), and 1 whetstone. Other items from the Colfax Ferry site (16-NA-15) are believed to be in the collection of the Louisiana Division of Archaeology, Baton Rouge, LA.

A detailed assessment of these associated funerary objects was conducted by the Williamson Museum staff in consultation with representatives of the Tunica-Biloxi Indian Tribe of Louisiana and the Louisiana Division of Archaeology.

The funerary objects recovered from the Colfax Ferry site (16-NA-15) indicate that the 32 graves excavated by Dr. Webb were most likely interred between 1764-1820. Historiographic data, oral traditions, and information gained in consultation concerning the collection indicate that the Colfax Ferry site (16-NA-15) is located in the area occupied by the Pascagoula and Biloxi Indians during the late 18th and early 19th centuries. Descendants of the Pascagoula and Biloxi Indians are represented by the Tunica-Biloxi Indian Tribe of Louisiana.

Officials of the Williamson Museum have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (3)(B), these 668 cultural items are reasonably believed to have been placed with or near human remains at the time of death as part of a death-rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from burial sites of Native American individuals. Officials of the Williamson Museum also have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (2), there is a relationship of shared group identity that can be reasonably traced between these unassociated funerary objects and the Tunica-Biloxi Indian Tribe of Louisiana.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these unassociated funerary objects should contact Dr. Pete Gregory, Director, Williamson Museum, Northwestern State University, Natchitoches, LA 71457, telephone (318) 357-4364, before January 22, 2003. Repatriation of these unassociated funerary objects to the Tunica-Biloxi Indian Tribe of Louisiana may begin after that date if no additional claimants come forward.

The Williamson Museum is responsible for notifying the Tunica-

Biloxi Indian Tribe of Louisiana that this notice has been published.

Dated: September 30, 2002.

**Robert Stearns,**

*Manager, National NAGPRA Program.*

[FR Doc. 02-32175 Filed 12-20-02; 8:45 am]

**BILLING CODE 4310-70-S**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Notice of Realty Action Proposed Exchange of Federally-Owned Lands for State-Owned Lands Located in Alleghany County, State of North Carolina

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of realty action for proposed land exchange.

**SUMMARY:** The following described Federally-owned land which was acquired by the National Park Service has been determined to be suitable for disposal by exchange. The authority for this exchange is Public Law 87-76 (75 Stat. 196), which authorized the purchase and exchange of land and interests therein on the Blue Ridge Parkway.

**DATES:** Comments on this proposed land exchange will be accepted through February 6, 2003.

**ADDRESSES:** Detailed information concerning this exchange including precise legal descriptions, Land Protection Plan, environmental assessment, and cultural reports, and Finding of No Significant Impact are available at the National Trails Land Resources Program Center, 1314 Edwin Miller Boulevard, P.O. Box 908, Martinsburg, West Virginia, 25402. Comments may also be mailed to this address.

**FOR FURTHER INFORMATION CONTACT:** Judy L. Brumback, Chief, Acquisition Division, National Park Service, National Trails Land Resources Program Center, P.O. Box 908, Martinsburg, WV 25402-0908. Phone: 304-263-4943.

**SUPPLEMENTARY INFORMATION:** The selected interest in Federal land is located within the boundaries of the Blue Ridge Parkway and is not required for inclusion into the park unit area. The land has been surveyed for cultural resources and endangered and threatened species. These reports are available upon request.

Fee ownership of the following Federally-owned property is to be exchanged: Tract 33-141 is a 101.971-acre portion of 145.8 acres acquired by the United States of America by deed

recorded in book 98, page 545, in the Clerk's Office of the Circuit Court of Alleghany County, State of North Carolina and in book 540, page 684, in the Clerk's Office of the Circuit Court of Wilkes County, State of North Carolina. Conveyance of the land by the United States of America will be done by Quitclaim Deed.

In exchange for the land described in the previous paragraph, the United States of America will acquire a 100.923-acre parcel of land currently owned by the State of North Carolina, lying within the boundaries of the Blue Ridge Parkway. Acquisition of these State lands will eliminate access from this parcel to the Parkway at Survey Station 238 and prevent construction and development upon completion of the exchange. The lands are being acquired in fee simple with no reservations, subject only to rights of way and easements of record.

The land to be acquired by the United States of America is described as follows: Tract 33-114 is a 100.923-acre portion of 124.48 acres acquired by the State of North Carolina and recorded in book 219, page 543, in the Clerk's Office of the Circuit Court of Alleghany County, State of North Carolina. Conveyance of the fee simple title will be done by a Quitclaim Deed as approved by the Solicitor's Office.

The value of the properties exchanged will be determined by a current fair market value appraisal and if they are not appropriately equal, the values shall be equalized by payment of cash, as circumstances require.

Interested parties may submit written comments to the address listed in the **ADDRESSES** paragraph. Adverse comments will be evaluated and this action may be modified or vacated accordingly. In the absence of any action to modify or vacate, this realty action will become the final determination of the Department of the Interior.

Dated: November 22, 2002.

**Daniel W. Brown,**

*Superintendent, Blue Ridge Parkway.*

[FR Doc. 02-32237 Filed 12-20-02; 8:45 am]

**BILLING CODE 4310-70-P**

## DEPARTMENT OF JUSTICE

## Executive Office for Immigration Review

## Agency Information Collection Activities: Proposed Extension of Currently Approved Collection; Comment Requested

**ACTION:** 30-Day notice of information collection under review; extension of a currently approved collection; notice of entry of appearance as attorney or representative before the Board of Immigration Appeals

The United States Department of Justice, Executive Office for Immigration Review, has submitted the following request for extension of currently approved information collection to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed extension of information collection is published to obtain comments from the public and affected agencies. The proposed information collection was previously published in the **Federal Register** 67 FR 64413-14 on October 18, 2002, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 22, 2003. This process is in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the times contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503.

Written comments and suggestions from the public and affected agencies concerning the proposed extension of a currently approved information collection instrument are encouraged. Your comments should address one or more of the following four points:

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

Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Overview of this information collection:

(1) *Type of information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals.

(3) *Agency form, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form EOIR-27, Executive Office for Immigration Review, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* *Primary:* Individuals. *Other:* Business or other for-profit; not-for-profit institutions. The information collected on EOIR-27 will be used (i) to determine whether or not a responding attorney or representative meets the regulatory criteria necessary to be authorized to represent aliens before the Board of Immigration Appeals, (ii) to provide the represented party an opportunity to expressly consent to such representation and to release of Executive Office for Immigration Review records to the representative, and (iii) to notify the Immigration and Naturalization Service and the Executive Office for Immigration Review of such representation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Estimated at 26,000 responses per year at 6 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Estimated at 2,600 annual burden hours.

*If additional information is required contact:* Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Washington, DC 20004.

Dated: December 18, 2002.

**Robert B. Briggs,**

*Clearance Officer, Department of Justice.*

[FR Doc. 02-32248 Filed 12-20-02; 8:45 am]

BILLING CODE 4410-30-M

## DEPARTMENT OF JUSTICE

## Executive Office for Immigration Review; Agency Information Collection Activities: Proposed Extension of Currently Approved Collection; Comments Requested

**ACTION:** 30-day notice of information collection under review; extension of currently approved collection; Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court.

The United States Department of Justice, Executive Office for Immigration Review, has submitted the following request for extension of currently approved information collection to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed extension of information collection is published to obtain comments from the public and affected agencies. The proposed information collection was previously published in the **Federal Register** (Volume 67, Number 202, Pages 64412-64413) on October 18, 2002, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 22, 2003. This process is in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the times contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503.

Written comments and suggestions from the public and affected agencies concerning the proposed extension of a currently approved information collection instrument are encouraged. Your comments should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Overview of this information collection:

(1) *Type of Information Collection:* Extension of Currently Approved Collection.

(2) *Title of the Form/Collection:* Notice of entry of Appearance as Attorney or Representative Before the Immigration Court.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form EOIR-28, Executive Office for Immigration Review, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: Individuals. Other: Business or other for-profit; not-for-profit institutions. The information collected on EOIR-28 will be used (i) to determine whether or not a responding attorney or representative meets the regulatory criteria necessary to be authorized to represent aliens before the Immigration Court, (ii) to provide the responding represented party an opportunity to expressly consent to such representation and to release of Executive Office for Immigration Review records to the representative, and (iii) to notify the Immigration and Naturalization Service and the Executive Office for Immigration Review of such representation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Estimated at 77,000 responses per year at 6 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Estimated at 7,700 annual burden hours.

*If additional information is required contact:* Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Washington, DC 20004.

Dated: December 18, 2002.

**Robert B. Briggs,**  
Clearance Officer, U.S. Department of Justice.  
[FR Doc. 02-32249 Filed 12-20-02; 8:45 am]

BILLING CODE 4410-30-M

## DEPARTMENT OF JUSTICE

### Executive Office for Immigration Review; Agency Information Collection Activities: Proposed Extension of Currently Approved Collection; Comment Request

**ACTION:** 30-Day notice of information collection under review; extension of currently approved collection; Immigration Practitioner Complaint Form.

The United States Department of Justice, Executive Office for Immigration Review, has submitted the following request for extension of currently approved information collection to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed extension of information collection is published to obtain comments from the public and affected agencies. The proposed information collection was previously published in the **Federal Register** (Volume 67, Number 202, Page 64413) on October 18, 2002, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 22, 2002. This process is in accordance with CFR 13320 10.

Written comments and/or suggestions regarding the times contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503.

Written comments and suggestions from the public and affected agencies concerning the proposed extension of a currently approved information collection instrument are encouraged. Your comments should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Overview of this information collection:

(1) *Type of Information Collection:* Extension of Currently Approved Collection.

(2) *Title of the Form/Collection:* Immigration Practitioner Complaint Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form EOIR-44, Executive Office for Immigration Review, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: Individuals. Other: Not-for-profit institutions; federal government. The information on this form will be used to determine whether or not, assuming the truth of the factual allegations raised therein, the Office of the General Counsel, Executive Office for Immigration Review, should conduct a preliminary disciplinary inquiry request additional information from the responding complainant, refer the matter to a state bar disciplinary authority or other law enforcement agency, or take no further action.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Estimated at 500 responses per year at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Estimated at 1000 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Washington, DC 20004.

Dated: December 18, 2002.

**Robert B. Briggs,**  
Clearance Officer, U.S. Department of Justice.  
[FR Doc. 02-32250 Filed 12-20-02; 8:45 am]

BILLING CODE 4410-30-M

## DEPARTMENT OF JUSTICE

### Executive Office for Immigration Review; Agency Information Collection Activities: Proposed Extension of Currently Approved Collection; Comments Requested

**ACTION:** 30-Day notice of information collection under review; extension of currently approved collection; Notice of

Appeal to the Board of Immigration Appeals of Decision of Adjudicating Official in Practitioner Disciplinary Case.

The United States Department of Justice, Executive Officer for Immigration Review, has submitted the following request for extension of currently approved information collection to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed extension of information collection is published to obtain comments from the public and affected agencies. The proposed information collection was previously published in the **Federal Register** (Volume 67, Number 202, Pages 64411-64412) on October 18, 2002, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 22, 2003. This process is in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the times contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503.

Written comments and suggestions from the public and affected agencies concerning the proposed extension of a currently approved information collection instrument are encouraged. Your comments should address one or more of the following four points:

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

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

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

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

Overview of this information collection:

(1) *Type of Information Collection:* Extension of Currently Approved Collection.

(2) *Title of the Form/Collection:* Notice of Appeal to the Board of Immigration Appeals of Decision of Adjudicating Official in Practitioner Disciplinary Case.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form EOIR-45, Executive Office for Immigration Review, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: Individuals. Other: None. The information on this form will be used by immigration practitioners to appeal an adverse decision of an Adjudicating Official in a disciplinary proceeding to the Board of Immigration Appeals, Executive Office for Immigration Review.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Estimated at 50 responses per year at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Estimated at 50 annual burden hours.

*If additional information is required contact:* Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Washington, DC 20004.

Dated: December 18, 2002.

**Robert B. Briggs,**

*Clearance Officer, U.S. Department of Justice.*

[FR Doc. 02-32251 Filed 12-20-02; 8:45 am]

**BILLING CODE 4410-30-M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-50,191]

#### **Alfred Dunner Inc., Parsippany, NJ; Notice of Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 18, 2001, in response to a worker petition which was filed by a company official on behalf of workers at Alfred Dunner Inc., Parsippany, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 4th day of December, 2002.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02-32233 Filed 12-20-02; 8:45 am]

**BILLING CODE 4510-30-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-42,194]

#### **Jean Michael's Incorporated, Willingboro, NJ; Notice of Termination of Investigation**

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 30, 2002, on behalf of workers at Jean Michael's Inc., Willingboro, New Jersey.

An active certification covering the petitioning group of workers remains in effect (TA-W-41, 699). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 4th day of December, 2002.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02-32229 Filed 12-20-02; 8:45 am]

**BILLING CODE 4510-30-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-37,651]

#### **Nortel Networks, Xros, Inc., Northern Telephone, Alteon Networks, Santa Clara, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 30, 2000, applicable to workers of Nortel Networks, Santa Clara, California. The notice was published in the **Federal Register** on June 29, 2000 (65 FR 40135).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of telecommunications equipment, primarily printed circuit assemblies and PBX telephone switches.

New information provided by the State shows that some workers

separated from employment at the Santa Clara, California location of Nortel Networks had their wages reported under three separate unemployment insurance (UI) tax accounts for Xros, Inc. and Northern Telephone, Santa Clara, California and Alteon Networks, Santa Clara, California and San Jose, California.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Nortel Networks who were adversely affected by increased imports.

The amended notice applicable to TA-W-37,651 is hereby issued as follows:

All workers of Nortel Networks, Santa Clara, California; and workers of Xros, Inc., Northern Telephone, and Alteon Networks, producing telecommunications equipment, primarily printed circuit assemblies and PBX telephone switches, at Nortel Networks, Santa Clara, California, who became totally or partially separated from employment on or after April 20, 1999, through May 30, 2002, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 26th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02-32234 Filed 12-20-02; 8:45 am]

**BILLING CODE 4510-30-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-42,214]

#### SPX Valves and Controls, Sartell, MN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 7, 2002, in response to a worker petition filed by the International Association of Machinists and Aerospace Workers, District Lodge No. 165, on behalf of workers at SPX Valves and Controls, Sartell, Minnesota.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 5th day of December 2002.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02-32230 Filed 12-20-02; 8:45 am]

**BILLING CODE 4510-30-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-50,080 and TA-W-50,080A]

#### VF Jeanswear Limited Partnership, A Subsidiary of VF Corporation, Pine Springs Facility, El Paso, TX; VF Jeanswear Limited Partnership, A Subsidiary of VF Corporation, Plaza Facility, El Paso, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 14, 2002 in response to a worker petition filed by a company official on behalf of workers at VF Jeanswear Limited Partnership, Pine Springs Facility, El Paso, Texas (TA-W-50,080) and VF Jeanswear Limited Partnership, a subsidiary of VF Corporation, Plaza Facility, El Paso, Texas (TA-W-50,080A).

The petitioning group of workers is covered by an active certification issued on February 11, 2002 and which remains in effect (TA-W-40,737). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 2nd day of December, 2002

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02-32231 Filed 12-20-02; 8:45 am]

**BILLING CODE 4510-30-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[NAFTA-6660]

#### State of Alaska Commercial Fisheries Entry Commission Permit #61639N, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182) concerning transitional adjustment assistance, hereinafter called NAFTA-TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61639N, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02-32220 Filed 12-20-02; 8:45 am]

**BILLING CODE 4510-30-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[NAFTA-6659]

#### State of Alaska Commercial Fisheries Entry Commission Permit #61361Q, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182) concerning transitional adjustment assistance, hereinafter called NAFTA-TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 61361Q, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02-32219 Filed 12-20-02; 8:45 am]

**BILLING CODE 4510-30-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[NAFTA-6662]

#### State of Alaska Commercial Fisheries Entry Commission Permit # 55223R, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103-182) concerning transitional adjustment assistance, hereinafter called NAFTA-TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 55223R, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02-32221 Filed 12-20-02; 8:45 am]

**BILLING CODE 4510-30-M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[NAFTA-6663]

#### State of Alaska Commercial Fisheries Entry Commission Permit #55366U Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182) concerning transitional adjustment assistance, hereinafter called NAFTA-TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #55366U, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02-32222 Filed 12-20-02; 8:45 am]

**BILLING CODE 4510-30-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[NAFTA-6684]

#### State of Alaska Commercial Fisheries Entry Commission Permit #57398V Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182) concerning transitional adjustment assistance, hereinafter called NAFTA-TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57398V, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02-32223 Filed 12-20-02; 8:45 am]

**BILLING CODE 4510-30-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[NAFTA-6685]

#### State of Alaska Commercial Fisheries Entry Commission Permit #57328L Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182) concerning transitional adjustment assistance, hereinafter called NAFTA-TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57328L, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02-32224 Filed 12-20-02; 8:45 am]

**BILLING CODE 4510-30-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[NAFTA-6689]

#### State of Alaska Commercial Fisheries Entry Commission Permit #61293L Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182) concerning transitional adjustment assistance, hereinafter called NAFTA-TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61293L, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02-32225 Filed 12-20-02; 8:45 am]

**BILLING CODE 4510-30-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[NAFTA-6690]

#### State of Alaska Commercial Fisheries Entry Commission Permit #58544E Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement



Implementation Act (Pub. L. 103-182) concerning transitional adjustment assistance, hereinafter called NAFTA-TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #58544E, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02-32226 Filed 12-20-02; 8:45 am]

BILLING CODE 4510-30-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[NAFTA-6691]

#### State of Alaska Commercial Fisheries Entry Commission Permit #64198L Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182) concerning transitional adjustment assistance, hereinafter called NAFTA-TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #64198L, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02-32227 Filed 12-20-02; 8:45 am]

BILLING CODE 4510-30-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

[NAFTA-6692]

#### State of Alaska Commercial Fisheries Entry Commission Permit #61965N, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182) concerning transitional adjustment assistance, hereinafter called NAFTA-TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61965N, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02-32228 Filed 12-20-02; 8:45 am]

BILLING CODE 4510-30-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) issued during the period of December, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are

threatened to become totally or partially separated; and

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

### Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-41,937; *Circuit Center, Inc.,*

*Kettering, OH*

TA-W-42,258; *Joan Fabrics Corp., Pilot Location, Hickory, NC*

TA-W-42,276; *Koei Industrial Corp., Ltd, Hillsboro OR*

TA-W-42,120 & A, B; *Autoline Industries, In., Oakbrook, IL, Argyle Industries, In., Argyle, WI, and Autoline Industries East, Inc., McElhatten, PA*

TA-W-42,181; *Georgia-Pacific Corp., Bowden Eastern Hardwood Div., Bowden, NC*

TA-W-42,287; *Crystal Dyeing and Finishing, Hickory, NC*

TA-W-42,249; *EnviroSystems Furniture, Inc., Grand Rapids, MI*

TA-W-42,332; *Parker Hannifin Corp., Gas Turbine Fuel Systems Div., Andover, OH*

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-41,990; *General Motors Corp., Linden, NJ*

TA-W-42,114; *Minnesota Brewing Company Holding, St. Paul, MN*  
TA-W-42,088; *Lucent Technologies, Mount Olive, NJ*

TA-W-41,988; *Sunbelt Interplex, Inc., Tamarac, FL*

TA-W-42,110; *Danam, Inc., El Paso, TX*

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-42,295; *Master Carrier, Inc., Mayport, PA*

TA-W-50,090; *YKK, (USA), Inc., Div. of YKK Corp. of America, El Paso, TX*

The investigation revealed that criteria (2) and (3) have not been met. Sales or production did not decline during the relevant period as required

for certification. Increased imports did not contribute importantly to worker separations at the firm.

TA-W-42,256; *Jackson Dewing Center, Madisonville, TN*

TA-W-42,079; *Nabors Alaska Drilling, Anchorage, AK*

The investigation revealed that criteria (1) and (3) have not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification. Increased imports did not contribute importantly to worker separations at the firm.

TA-W-42,320; *Apache Corp., Houston, TX*

#### **Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA-W-42,264; *ASCG Inspection, Inc., Anchorage, AK: October 2, 2001.*

TA-W-42,290; *Glen Raven, Inc., Glen Raven Filament Fabrics, LLC, Burnsville Plant, Burnsville, NC: September 30, 2001.*

TA-W-42,306; *Atlas Copco Compressors, Inc., Holyoke, MA: October 9, 2001.*

TA-W-42,271; *Uniek, Inc., Wood Div., Greenwood, MS: September 30, 2001.*

TA-W-42,323; *Perma Grain Products, Armstone Div., Lenoir City, TN: October 15, 2001.*

TA-W-42,187; *Faith Apparel, Inc., Richlands, VA: September 9, 2001.*

TA-W-42,167; *ADC Telecommunications, Le Sueur, MN: September 4, 2001.*

TA-W-42,158; *O-Cedar Brands, Inc., Standard Brush Div., Portland, IN: September 5, 2001.*

TA-W-41,916; *Emess Design Group, LLC, Ellwood City, PA: July 15, 2001.*

TA-W-42,225; *Ametek, Ametek Aerospace and Power Instruments Div., Wilmington, MA: September 20, 2001.*

TA-W-42,217; *Microelectronic Modules Corp., New Berlin, WI: September 23, 2001.*

TA-W-42,204; *G.S. of West Virginia, Inc., Ravenwood, WV: September 13, 2001.*

TA-W-42,255; *Waltec Forgings, Inc., Port Huron, MI: September 30, 2001.*

TA-W-42,219; *Celestica Corp., Foothill Ranch, CA: September 12, 2001.*

TA-W-42,177; *Fred B. Moe Logging Co., Centralia, WA: September 6, 2001.*

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA-W-50,043; *Dynagear, Inc., Manley Valve Div., York, PA: November 5, 2001.*

TA-W-50,032; *Kent, Inc., Fort Kent, ME: November 5, 2001.*

TA-W-50,031; *Saunders Brothers, Inc., Westbrook, ME: November 7, 2001.*

TA-W-50,044; *Wrought Washer Manufacturing, Inc., Milwaukee, WI: November 7, 2001.*

TA-W-50,077; *Northern Cambria Shirt Co., Northern Cambria, PA: November 6, 2001.*

TA-W-50,201; *Aerostar International, Inc., Parkston, SD: November 19, 2001*

TA-W-50,112; *California Manufacturing Co., d/b/a Stanwood Corp., Pelahatchie, MS: November 5, 2001.*

TA-W-50,167; *Bike Athletic Co., Cutting Department, Knoxville, TN: November 21, 2001.*

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA-W-50,173; *Twiford International, Inc., Sebring, FL: November 15, 2001.*

TA-W-50,138; *BBA Nonwovens Washougal, Inc., Washougal, WA: November 19, 2001.*

TA-W-50,072; *Federal Mogul, Powertrain Systems Div., Orangeburg, SC: November 11, 2001.*

TA-W-50,017; *Blue Bird Corp., Blue Bird Body Co., Blue Bird Midwest Div., Mt. Pleasant, IA: November 5, 2001.*

TA-W-50,061; *VF Jeanswear, Limited Partnership, A Subsidiary of VF Corp., Woodstock, VA: November 6, 2001.*

TA-W-50,066; *Square D, Lincoln, NE: November 8, 2001.*

TA-W-50,087 & A; *VF Jeanswear, Limited Partnership, A Subsidiary of VF Corp., Okemah, OK and Coalgate, OK: November 6, 2001.NC: November 7, 2001.*

TA-W-50,007; *Levolor-Kirsh Window Fashions, Div. of Newell Rubbermaid, Freeport, IL: November 4, 2001.*

The following certification has been issued. The workers qualify as adversely affected secondary workers under Section 222.

TA-W-50,005; *Bottoms Group, Inc., Auburn, ME: November 4, 2001.*

Also, pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103-182) concerning transitional adjustment assistance hereinafter called (NAFTA-TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the months of December, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA-TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

#### **Negative Determinations NAFTA-TAA**

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA-TAA-07595; *Microelectronic Modules Corp., New Berlin, WI*

NAFTA-TAA-07564; *Georgia-Pacific Corp., Bowden Hardwood Div., Bowden, NC*

NAFTA-TAA-06432; *Emess Design Group, LLC, Ellwood City, PA*

NAFTA-TAA-06469; *Sunbelt Interplex, Inc., Tamarac, FL*

NAFTA-TAA-06489; *Minnesota Brewing Co., St. Paul, MN*

NAFTA-TAA-07578; *Enviro Systems Furniture, Inc., Grand Rapids, MI*

NAFTA-TAA-07623; *ATK North America, A Subsidiary of Vege Motoren, Falmouth, KY*

NAFTA-TAA-07642; *Electric Steel Castings Co., Indianapolis, IN*

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA-TAA-07613; *Legato Systems, Inc., Orem, UT*

NAFTA-TAA-07600; *Autoline Industries, Inc., Oakbrook, IL*

#### **Affirmative Determinations NAFTA-TAA**

NAFTA-TAA-06422; *Matsushita Home Appliance Co., Danville, KY: July 22, 2001.*

NAFTA-TAA-06996; *State of Alaska Commercial Fisheries Entry Commission Permit #57350P, South Naknek, AK: September 5, 2001.*

NAFTA-TAA-07547; *Fred B. Moe Logging Co., Centralia, WA: September 6, 2001.*

NAFTA-TAA-07570; *Transpro, Inc., d/b/a Go/Dan Industries, Maquoketa, IA: September 18, 2001.*

NAFTA-TAA-07575; *Celestica Corp., Foothill Ranch, CA: September 12, 2001.*

NAFTA-TAA-07620; *Trailmobile Trailer, LLC, Charleston, IL: July 25, 2001.*

NAFTA-TAA-07634; *Wolverine World Wide, Inc., Formerly Frolic Footwear, A Div. of Wolverine Manufacturing Group, Arkansas Operations, Monette, AR: October 23, 2001.*

NAFTA-TAA-07636; *Celestica Corp., Oklahoma City, OK: October 28, 2001.*

NAFTA-TAA-07659; *Electric Systems, Inc., Elysburg, PA: October 31, 2001*

NAFTA-TAA-07576; *Ametek, Ametek Aerospace and Power Instruments Div., Wilmington, MA: September 23, 2001.*

I hereby certify that the aforementioned determinations were issued during the month of December, 2002. Copies of these determinations are available for inspection in Room C-5311, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: December 10, 2002.

**Edward A. Tomchick,**  
*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 02-32235 Filed 12-20-02; 8:45 am]

BILLING CODE 4510-30-P

## **DEPARTMENT OF LABOR**

### **Employment and Training Administration**

#### **Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) issued during the period of November, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

#### **Negative Determinations for Worker Adjustment Assistance**

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-42,185; *Juno, Inc., Blytheville, AR*

TA-W-42,016; *National Torch Tip, Inc., Pittsburgh, PA*

TA-W-42,051; *Citation Corp.-Interstate Forgings Industries, Milwaukee, WI*

TA-W-41,970; *Dimension Tech, Inc., Ironwood, MI*

TA-W-41,889; *United Container Machinery, Glen Arm, Maryland*

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-42,300; *AbelConn, LLC, Cokato, MN*

TA-W-42,831; *MetalDyne, Inc. (formerly Accura Tool & Mold Co., Inc.), Crystal Lake, IL*

TA-W-42,068; *Motorola, Inc., SPS, Chandler, AZ*

TA-W-41,730; *Motorola, Inc., RF-1, Phoenix, AZ*

TA-W-41,859; *King Press, Joplin, MO*  
TA-W-42,298; *Massillon Stainless, Inc., Massillon, OH*

TA-W-42,211; *Motorola, Inc., Semiconductor Products Sector, Bipolar Manufacturing Center (BMC), Mesa, AZ*

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-42,235; *The Design Room of Cattiva, Inc., New York, NY*

TA-W-50,108 & A; *Ericsson, Inc., Global Services North America, Regional Supply and Support Center, Plano, TX and Richardson, TX*

TA-W-42,322, A & B; *Kelly Staff Leasing, Inc., San Diego, CA, Kelly Services, Inc., Troy, MI and Delphi Automotive Systems, El Paso, TX*

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-42,294; *Glucona America, Inc., Janesville, WI*

#### **Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA-W-42,296; *Westwood Industries LLC, Luxury Home Group, New York, NY: October 2, 2001.*

TA-W-42,274; *Angelica Image Apparel, a Div. of Angelica Corp., Alamo, TN: May 23, 2001.*

TA-W-42,309; *Advanced Glassfiber Yarns, Huntingdon, PA: October 15, 2001.*

TA-W-40,842; *Milwaukee Electric Tool Corp., Blythville, AR: November 5, 2000.*

TA-W-42,087; *Milwaukee Electric Tool Corp., Brookfield, WI: June 19, 2001.*

TA-W-42,049; *The Boeing Company, Boeing Commercial Aircraft, Wichita Div., Tulsa Business Unit, Tulsa, OK: July 17, 2001.*

TA-W-42,044; *Siemens VDO Automotive, Lima, OH: August 21, 2001.*

TA-W-41,581; *The Cincinnati Gear Company, a/k/a Cincinnati Steel Treating (C.S.T.), Cincinnati, OH: May 1, 2001. July 22, 2001.*

TA-W-41,529 & A; Mexican Industries, Detroit, MI and Dearborn, MI: January 23, 2001.

TA-W-42,355; Ferro Corp., East Liverpool Plant, East Liverpool, OH: October 23, 2001.

TA-W-42,340; Titan Wheel Corp. of Virginia, Saltville, VA: October 25, 2001.

TA-W-42,339; Doyle Shirt Manufacturing, Doyle, TN: October 24, 2001.

TA-W-42,333; Dunbrooke Sportswear, a Div. of American Marketing Industries, Inc., El Dorado Springs, MO: October 21, 2001.

TA-W-42,231; The Doe Run Resources Co., The Southeast Missouri Mining and Milling Div., Viburnum, MO: September 25, 2001.

TA-W-42,226; R and A Investments, d/b/a Mini-Circuits, Hialeah, FL: September 16, 2001.

TA-W-42,222; EHV-Weidmann Industries, Inc., a Subsidiary of Wicor Americas, St. Johnsbury, VT

TA-W-42,206; Hoffco/Comet Industries, In., Rushville, IN: September 16, 2001.

TA-W-42,141; Manufacturers' Services Limited, Midwest Operations, Mt. Prospect, IL: August 27, 2001.

TA-W-42,134; Tyco Electronics, Printed Circuit Group, Melbourne Div., Melbourne, FL: August 16, 2001.

TA-W-42,055; Plymouth, Inc., Radford, VA: July 18, 2001.

TA-W-41,618 & A; Ethan Allen, Inc., Casegoods Factory, Randolph, VT and Lumber Mill, Orleans, VT: May 29, 2001.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA-W-50,002; Longview Fibre Co., Leavenworth Wood Products, Leavenworth, WA: November 4, 2001.

TA-W-50,097; S. Goldberg & Co., Inc., Hackensack, NJ: November 4, 2001.

TA-W-50,069; L.W. Packard and Co., Inc., Ashland, NH: November 8, 2001.

TA-W-50,041 & A,B,C; Woods Industries, Inc., Jasonville, IN, Worthington, IN, Mooresville, IN and Carmel, IN: November 6, 2001.

TA-W-50,027; Stimson Lumber Co., Libby, MT: November 6, 2001.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA-W-50,021; Buehler Motor, Inc., Kinston, NC: November 5, 2001.

TA-W-50,053; Advance Transformer Corp., Monroe, WI: November 1, 2002.

TA-W-50,014; Kwikset Corp., a Subsidiary of Black and Decker Corp., Waynesboro, GA: November 5, 2001.

TA-W-50,046; Crown North America, a Div. of Leggett and Platt, Inc., Wooster, OH: November 7, 2001.

TA-W-50,116; J. Star Bodco, Inc., a Subsidiary of Industrie Bodco, Inc., Fort Atkinson, WI: November 16, 2001.

TA-W-50,081 & A; Drusco, Inc., Miami, FL and The Cutting Company, Inc., Miami, FL: November 13, 2001.

TA-W-50,070; Eaton Corporation, Fluid Power Div., Mooresville, NC: November 7, 2001.

TA-W-50,062; After Six, Inc., Athens, GA: November 5, 2001.

TA-W-50,055; Kraft Foods, Kool-Aid Plant, Chicago, IL: November 8, 2001.

TA-W-50,018; Court Metal Finishing, Inc., d/b/a Valve Finishing Co., Mentor, OH: November 5, 2001.

The following certification has been issued. The workers qualify as adversely affected secondary workers under Section 222.

TA-W-50,006; Sherman Lumber Company, Sherman Station, ME: November 4, 2001.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103-182) concerning transitional adjustment assistance hereinafter called (NAFTA-TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the months of November, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA-TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such

workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

#### Negative Determinations NAFTA-TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA-TAA-06452; National Torch Tip, Inc., Pittsburgh, PA

NAFTA-TAA-07571; International Comfort Products Corp. (USA), Div. of Carrier Corp., Lewisburg, TN

NAFTA-TAA-07594; Juno, Inc., Blytheville, AR

NAFTA-TAA-07640; AbelConn, LLC, Cokato, MN

NAFTA-TAA-05348; GE Lexington Lamp Plant, Lexington, KY

NAFTA-TAA-06333; King Press, Joplin, MO

NAFTA-TAA-06338; Metaldyne, Inc., (Formerly Accura Tool and Mold Co., Inc.), Crystal Lake, IL

NAFTA-TAA-06461; Dimension Tech, Inc., Ironwood, MI

NAFTA-TAA-06470; Citation Corp.- Interstate Forgings Industries, Milwaukee, WI

NAFTA-TAA-06528; U.S. Manufacturing Corp., Port Huron, MI

NAFTA-TAA-06529; Coleman Cable, Inc., El Paso, TX

NAFTA-TAA-07559; Makita Corporation of America, Buford, GA

NAFTA-TAA-07649; Graphic Sportswear Unlimited, Inc., Austin, TX

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA-TAA-07650 & A, B; Kelly Staff Leasing, Inc., San Diego, CA, Kelly Services, Inc., Troy, MI and Delphi Automotive Systems, El Paso, TX

NAFTA-TAA-07628; Health South, Occupational Medical Clinic, El Paso, TX

NAFTA-TAA-06511; Netmanage, Inc., Bellingham Engineering, Bellingham, WA

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) did not become totally or partially separated from employment as required for certification.

NAFTA-TAA-06814; *State of Alaska Commercial Fisheries Entry Commission Permit #61971Q, Koligangly, AK*

NAFTA-TAA-07044; *State of Alaska Commercial Fisheries Entry Commission Permit #55779F, Togiak, AK*

NAFTA-TAA-07063; *State of Alaska Commercial Fisheries Entry Commission Permit #57325J, Togiak, AK*

NAFTA-TAA-07330; *State of Alaska Commercial Fisheries Entry Commission Permit #57511L, Naknek, AK*

NAFTA-TAA-06775; *State of Alaska Commercial Fisheries Entry Commission Permit #58360M, Newhalen, AK*

NAFTA-TAA-06749; *State of Alaska Commercial Fisheries Entry Commission Permit #60501X, Egegik, AK*

NAFTA-TAA-06713; *Permit #61361Q, Dillingham, AK*

NAFTA-TAA-06635; *State of Alaska Commercial Fisheries Entry Commission Permit #55222A, Dillingham, AK*

NAFTA-TAA-06566; *State of Alaska Commercial Fisheries Entry Commission Permit #57687H, Clarks, AK*

NAFTA-TAA-07424; *State of Alaska Commercial Fisheries Entry Commission Permit #58234H, Dillingham, AK*

NAFTA-TAA-07354; *Permit #58022H, Naknek, AK*

NAFTA-TAA-07338; *Permit #SO4T58023, Naknek, AK*

NAFTA-TAA-07331; *State of Alaska Commercial Fisheries Entry Commission Permit #65830W, Naknek, AK*

The investigation revealed that criteria (2) has not been met. Sales or production, or both, did not decline during the relevant period as required for certification.

NAFTA-TAA-06728; *State of Alaska Commercial Fisheries Entry Commission Permit #57995V, Dillingham, AK*

NAFTA-TAA-07194; *State of Alaska Commercial Fisheries Entries Commission Permit #61231Q, Dillingham, AK*

NAFTA-TAA-06893; *State of Alaska Commercial Fisheries Entries Commission Permit #55324S, Naknek, AK*

NAFTA-TAA-06586; *State of Alaska Commercial Fisheries Entries Commission Permit #67590E, Dillingham, AK*

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production, or both, did not decline during the relevant period as required for certification. Imports Canada or Mexico did not contribute importantly to workers' separations.

NAFTA-TAA-07632; *Massillon Stainless, Inc., Massillon, OH*

#### **Affirmative Determinations NAFTA-TAA**

NAFTA-TAA-05693; *Braeco, Weaverville, NC: June 8, 2000.*

NAFTA-TAA-06567; *State of Alaska Commercial Fisheries Entry Commission, Permit #57436I, Clarks Point, AK: September 5, 2001.*

NAFTA-TAA-06667; *State of Alaska Commercial Fisheries Entry Commission Permit #60406B, Dillingham, AK: September 5, 2001.*

NAFTA-TAA-06906; *Permit #60541O, Naknek, AK: September 5, 2001.*

NAFTA-TAA-07583; *The Doe Run Resources Company, The southeast Missouri Mining and Milling Div., Viburnum, MO: September 25, 2001.*

NAFTA-TAA-05626; *Milwaukee Electric Tool Corp., Blythville, AR: December 5, 2000.*

NAFTA-TAA-06524; *Milwaukee Electric Tool Corp., Brookfield, WI: June 19, 2001.*

I hereby certify that the aforementioned determinations were issued during the months of November, 2002. Copies of these determinations are available for inspection in Room C-5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: December 4, 2002.

**Edward A. Tomchick,**  
*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 02-32236 Filed 12-20-02; 8:45 am]

**BILLING CODE 4510-30-P**

## **DEPARTMENT OF LABOR**

### **Employment and Training Administration**

[NAFTA-03891]

#### **Nortel Networks, Xros, Inc, Northern Telephone, Alteon Networks, Santa Clara, California; Amended Certification Regarding Eligibility to Apply for NAFTA Transitional Adjustment Assistance**

In accordance with Section 250(a), Subchapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on May 30, 2000, applicable to workers of Nortel Networks, Santa Clara, California. The notice was published in the **Federal Register** on June 8, 2000 (65 FR 36470).

At the request of a State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of telecommunications equipment, primarily printed circuit assemblies and PBX telephone switches.

New information provided by the State shows that some workers separated from employment at the Santa Clara, California location of Nortel Networks had their wages reported under three separate unemployment insurance (UI) tax accounts for Xros, Inc. and Northern Telephone, Santa Clara, California and Alteon Networks, Santa Clara, California and San Jose, California.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Nortel Networks who were adversely affected by a shift of production of telecommunication equipment to Canada.

The amended notice applicable to NAFTA-03891 is hereby issued as follows:

All workers of Nortel Networks, Santa Clara, California; and workers of Xros, Inc., Northern Telephone, Alteon Networks, producing telecommunications equipment, primarily printed circuit assemblies and PBX telephone switches at Nortel Networks, Santa Clara, California, who became totally or partially separated from employment on or after April 27, 1999, through May 30, 2002, are eligible to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974;

Signed at Washington, DC this 26th day of November, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02-32232 Filed 12-20-02; 8:45 am]

BILLING CODE 4510-30-P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02-148]

### Notice of Prospective Patent License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Prospective Foreign Patent License.

**SUMMARY:** NASA hereby gives notice that Phoenix Systems International, Inc., of Pinebrook, New Jersey, has applied for an exclusive foreign patent license to practice the invention described and claimed in KSC-12235, "High Temperature Decomposition of Hydrogen Peroxide,"—Application Serial No. 10/014,140 which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Phoenix Systems International, Inc., currently has an exclusive patent license with NASA for KSC-12235, "High Temperature Decomposition of Hydrogen Peroxide." Written objections to the prospective grant of a license should be sent to Randy Heald, Patent Counsel, John F. Kennedy Space Center, Kennedy Space Center, FL 32899.

**DATES:** Responses to this Notice must be received by January 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Randall M. Heald, Assistant Chief Counsel/Patent Counsel, John F. Kennedy Space Center, Mail Code CC-A, Kennedy Space Center, FL 32899, telephone (321) 867-7214.

Dated: December 16, 2002.

**Paul G. Pastorek,**

*General Counsel.*

[FR Doc. 02-32179 Filed 12-20-02; 8:45 am]

BILLING CODE 7510-01-P

## NUCLEAR REGULATORY COMMISSION

[IA-02-031]

### In the Matter of John Todd Bilinsky; Order Prohibiting Involvement in NRC-Licensed Activities

I

John Todd Bilinsky was employed as a technician by NTH Consultants, Ltd. (Licensee) of Farmington Hills and Grand Rapids, Michigan. NTH Consultants, Ltd., holds License No. 21-14894-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 30 on June 17, 1996. The license authorizes the use of Cesium-137 and Americium-241 sealed sources in Troxler moisture/density gauges in accordance with the conditions specified therein.

II

On November 2, 2001, NTH Consultants Ltd., reported to the NRC that a Troxler moisture/density gauge containing NRC-licensed material had been stolen and subsequently recovered. The NRC Office of Investigations (OI) conducted an investigation into the reported theft of Troxler Model 3411B moisture/density gauge (Serial No. 16990) containing NRC-licensed material in two sealed sources (8 mCi of Cesium-137, Serial No. 50-6374, and 40 mCi of Americium-241, Serial No. 47-12413). The Office of Investigations issued Report No. 3-2001-053 on July 26, 2002. Information developed during that investigation indicated that John Todd Bilinsky was previously employed by NTH Consultants, Ltd., at its facility in Grand Rapids, Michigan, and Mr. Bilinsky was authorized to use Troxler moisture/density gauges. On September 14, 2001, an employee of the Licensee learned that Mr. Bilinsky was soliciting outside work from customers of NTH Consultants, Ltd. As a result of the solicitations, Mr. Bilinsky's employment was suspended by the Licensee on September 21, 2001, and his employment was terminated on September 24, 2001.

During October 2001, licensee personnel conducted a property inventory and could not account for Troxler Model 3411B moisture/density gauge (Serial No. 16990). The Licensee determined that the gauge was returned to its storage area on August 31, 2001. At that time, the gauge utilization log had been updated to reflect that this specific moisture-density gauge was broken and should be transferred from the Grand Rapids, Michigan, office to

the Farmington Hills, Michigan, corporate office for repairs. When Mr. Bilinsky was terminated on September 24, 2001, the Licensee was not aware that Mr. Bilinsky had the gauge in his possession. The Licensee did not learn that the gauge was in the possession of Mr. Bilinsky until November 2, 2001, when another employee of NTH Consultants retrieved the gauge from Mr. Bilinsky.

III

Based on the above, it appears that John Todd Bilinsky, a former employee of the Licensee, acquired and possessed, without authorization, a Troxler Model 3441B moisture-density gauge (Serial No. 16990) containing NRC-licensed material, that was owned by NTH Consultants, Ltd. Mr. Bilinsky's possession of a Troxler Model 3411B moisture-density gauge containing byproduct material (nominally 8 millicuries of cesium-137 and 40 millicuries of americium-241:Be) without authorization of an NRC licensee or without a specific or general license issued by the NRC or an Agreement State, is an apparent deliberate violation of 10 CFR 30.3, "Activities Requiring License."

Further, Mr. Bilinsky's conduct has raised serious doubt as to whether he can be relied upon to comply with NRC requirements in the future.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Bilinsky were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Bilinsky be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, *it is hereby ordered that:*

1. John Todd Bilinsky is prohibited for five years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Mr. Bilinsky is currently involved with another licensee in NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. The Director, OE, may, by letter, relax or rescind any of the above conditions upon demonstration by Mr. Bilinsky of good cause.

## V

In accordance with 10 CFR 2.202, John Todd Bilinsky must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Bilinsky or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, 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 Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532-4351, and to Mr. Bilinsky if the answer or hearing request is by a person other than Mr. Bilinsky. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov) and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). If a person other than Mr. Bilinsky requests a hearing, that person shall set forth with particularity the manner in which his

interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).<sup>1</sup>

If a hearing is requested by Mr. Bilinsky or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in section IV above shall be effective and final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in section IV shall be final when the extension expires if a hearing request has not been received.

Dated this 12th day of December, 2002.

For the Nuclear Regulatory Commission.

**Carl J. Paperiello,**

*Deputy Executive Director for Materials, Research and State Programs.*

[FR Doc. 02-32244 Filed 12-20-02; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

[License Number 37-00118-07]

### Issuance of Environmental Assessment and Finding of No Significant Impact: Exemption

The U.S. Nuclear Regulatory Commission (NRC) is authorizing the University of Pennsylvania an exemption from 10 CFR 20.1301 to allow adults providing care to minors undergoing medical treatment with byproduct material during confinement to receive a dose up to 2 rems (0.02 Sievert (Sv) or 20 millisievert (mSv)) in a year.

### Environmental Assessment

#### Identification of the Proposed Action

The University of Pennsylvania is licensed by the NRC for the medical use of byproduct material. This licensee has requested, in letters dated March 15, 2002, and April 11, 2002, that the NRC grant it an exemption to allow adults providing care to minors undergoing medical treatment with byproduct

<sup>1</sup>The most recent version of title 10 of the Code of Federal Regulations published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714 (d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714 (d), please see 67 FR 20884; April 29, 2002.

material during confinement to receive a dose up to 2 rems (0.02 Sv) in a year. 10 CFR 20.1301(a)(1) requires licensees to conduct operations so that the total effective dose equivalent to individual members of public does not exceed 0.1 rem (1 mSv) in a year. Notwithstanding this provision, a licensee may permit higher doses to visitors when visiting an individual who cannot be released from the hospital in accordance with 10 CFR 35.75. The regulations in 10 CFR 20.1301(c) permit licensees to allow visitors to receive an annual dose of up to 0.5 rem (5 mSv) provided the dose received does not exceed 0.5 rem (5 mSv) and the authorized user has determined before the visit that it is appropriate.

The University of Pennsylvania (the University) requested this higher exposure for these adult caregivers for several reasons. The University indicated that, although these caregivers are not employees of the institutions covered by the license, they voluntarily provide essential assistance and support for a unique patient population. The adult caregivers not only provide comfort and company to the children, but also participate in many of the daily tasks for the children during their isolation. The physicians think that applying a lower dose limit to these caregivers could negatively impact patient treatment, overall patient outcome and could increase the risk to the patient. The licensee further stated that the presence of a familiar caregiver reassures and calms the anxious child. Therefore, restricting the access of these caregivers to the children during this time will increase the risk of the procedure for several reasons. Many small children become highly anxious and even combative if forced separation from these caregivers is mandated. This separation may require intravenous sedation, with the attendant risk of respiratory depression or other adverse effects. In its correspondence to NRC, the University will identify these caregivers and treat them as though they are radiation workers; they will receive the same training and monitoring as required of other radiation workers, including instructions in maintaining their doses as low as reasonably achievable. In addition, standard radiation protection practices of minimizing time, maximizing distance and use of shielding will be employed to the extent practicable.

#### Need for the Proposed Action

The exemption is needed so that the University can provide optimum medical treatment and care to minor patients receiving treatment using

byproduct material. The higher allowed exposure limit to these adult caregivers for minor patients allows for a more positive overall outcome and lower risk to the patient.

#### *Environmental Impacts of the Proposed Action*

There will be no significant environmental impact or undue hazard to life or property from the proposed action due to the fact that no material is being released into the environment and all of the operations involving the byproduct material will follow normal operating procedures followed prior to the request for the exemption.

During operations, the radiation dose rates from the minor patient will not be different than occurs normally for the prescribed medical treatment. The doses to the adult caregiver could be higher than doses allowed for members of the public by 10 CFR 20.1301 as a result of the closer proximity to the minor patient necessary to allow participation in many of the daily tasks for the children during their isolation. The University indicated it will identify these caregivers and treat them as though they are radiation workers; they will receive the same training and monitoring as required of other radiation workers, including instructions in maintaining their doses as low as reasonably achievable. In addition, standard radiation protection practices of minimizing time, maximizing distance and use of shielding will be employed to the extent practicable.

#### *Alternatives to the Proposed Action*

As required by section 102(2)(E) of NEPA (42 U.S.C. 4322(2)(E)), possible alternatives to the final action have been considered. The only alternative is to deny the exemption. This option would not produce a substantial gain in protecting the human environment. University employee caregivers would be providing the care that will be provided by the family adult caregiver. Allowing the family adult caregiver to perform some of the minor patient care tasks improves the outcome of the treatment.

#### *Alternative Use of Resources*

No alternative use of resources was considered due to the reasons stated above.

#### *Agencies and Persons Consulted*

NRC consulted the Commonwealth of Pennsylvania, Department of Environmental Protection, Bureau of Radiation Protection regarding this matter. The Commonwealth of

Pennsylvania has no objection to NRC approval of the proposed exemption request or the conclusions of this environmental assessment.

#### *Identification of Sources Used*

Letters from the University to NRC, Region I, dated March 15, 2002, and April 11, 2002.

#### **Finding of No Significant Impact**

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based on the foregoing environmental assessment, the Commission finds that the proposed action of granting the exemption from 10 CFR 20.1301 will not significantly impact the quality of the human environment. Accordingly, the Commission has determined that an environmental impact statement for the proposed exemption is not warranted.

*Further Information:* The request for an exemption was docketed under 10 CFR part 20, License Number 37-00118-07. For further details with respect to this action, see the exemption request letters dated March 15, 2002, and April 11, 2002. The NRC maintains an Agencywide Documents Access and Management System (ADAMS) which provides text and image files of NRC's public documents. These documents may be accessed through the NRC Public Electronic Reading Room on the Internet at <http://nrc.gov/NRC/ADAMS/index.html>. If you do not have access to ADAMS or if there are problems in accessing documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1-800-397-4209, (301) 415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated in Rockville, Maryland, this 12th day of December, 2002.

For the Nuclear Regulatory Commission,  
**Thomas H. Essig**,  
*Chief, Material Safety and Inspection Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 02-32246 Filed 12-20-02; 8:45 am]

**BILLING CODE 7590-01-P**

#### **NUCLEAR REGULATORY COMMISSION**

#### **Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the U.S. Department of Health and Human Services, Food and Drug Administration**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of renewal of Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission and the U.S. Department of Health and Human Services, Food and Drug Administration (DHHS, FDA).

**SUMMARY:** The NRC and the DHHS, FDA, signed a MOU on August 26, 1993, which describes the roles of the FDA and NRC, and the coordination between the two agencies. The MOU was noticed in the **Federal Register** on September 8, 1993 (58 FR 47300). This notice announces the renewal of the MOU, with Minor Changes. The latest version of the MOU can be found on the NRC Web site (<http://www.nrc.gov/materials/medical.html>).

**FOR FURTHER INFORMATION, CONTACT:** Thomas H. Essig, Office of Nuclear Materials Safety and Safeguards, MS T 8-F-5, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 415-7231.

Dated: December 13, 2002.

**Thomas H. Essig**,  
*Chief, Materials Safety and Inspection Branch, Division of Industrial and Medical Nuclear Safety, NMSS.*  
[FR Doc. 02-32245 Filed 12-20-02; 8:45 am]  
**BILLING CODE 7590-01-P**

#### **NUCLEAR REGULATORY COMMISSION**

[Docket No. 40-8698]

#### **Notice of Amendment Request and Consideration of Proposed Reclamation Plan for the Shootaring Canyon Uranium Project, Ticaboo, Utah, and Opportunity to Provide Comments and to Request a Hearing**

##### **I. Introduction**

The Nuclear Regulatory Commission (NRC) has received, by letter dated October 24, 2002, a request from Plateau Resources Limited (PRL) to (1) amend Source Materials License SUA-1371 for the Shootaring Canyon Uranium Project to change its status from "operational" to "reclamation;" and (2) review and approve PRL's proposed reclamation plan for this facility.

The uranium mill at Shootaring Canyon operated for only three months in 1982, generating a small amount of mill tailings (the byproduct material wastes produced by extraction of uranium from ore). The mill has been on standby status since that time and PRL has decided to permanently cease operational activities at Shootaring Canyon and initiate decommissioning and reclamation of the mill site. Consistent with this decision, PRL has



submitted a tailings reclamation and decommissioning plan for the Shooting Canyon Uranium Project.

## II. Opportunity To Provide Comments

The NRC is providing notice to individuals in the vicinity of the facility that the NRC is in receipt of this request, and will accept comments concerning this action within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to the Chief, Rules and Directives Branch, Division of Administrative 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 T-6 D59, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852, from 7:30 a.m. until 4:15 p.m. on Federal workdays.

## III. Opportunity to Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings" of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Whether or not a person has or intends to provide comments as set out in section II above, pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within 30 days of the publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Rulemaking and Adjudications Staff of the Office of the Secretary of the Commission at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States government offices, it is requested that requests for hearing also be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101, or by e-mail to [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov).

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be

served, by delivering it personally or by mail, to:

(1) The applicant, Plateau Resources Limited, 877 North 8th West, Riverton, Wyoming 82501, Attention: Fred Craft; and

(2) The NRC staff, by delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Because of continuing disruptions in the delivery of mail to United States government offices, it is requested that requests for hearing also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to 301-415-3725, or by email to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov).

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

- (1) The interest of the requestor;
- (2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);
- (3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and
- (4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

## IV. Further Information

The application for the license amendment and proposed decommissioning and reclamation plan are available for inspection at NRC's Public Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html> (ADAMS Accession Number ML023090073). Documents may also be examined and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. Any questions with respect to this action should be referred to Rick Weller, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8-A33, Washington, DC 20555-0001. Telephone: (301) 415-7287, Fax: (301) 415-5390.

Dated in Rockville, Maryland, this 13th day of December, 2002.

For the Nuclear Regulatory Commission.

**Daniel M. Gillen,**

*Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 02-32243 Filed 12-20-02; 8:45 am]

BILLING CODE 7590-01-P

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## POSTAL SERVICE

### Notice of Availability of Annual Report of Compliance With Alternative Fuel Vehicle Acquisition Requirements of the Energy Policy Act of 1992

**AGENCY:** Postal Service.

**ACTION:** Notice.

**SUMMARY:** By this action, the United States Postal Service is making available to the public its annual report of compliance with the Energy Policy Act of 1992 (EPAct) alternative fuel vehicle (AFV) acquisition requirements. The EPAct specifies minimum numbers of AFVs that Federal agencies must acquire when purchasing or leasing light-duty vehicles. For Fiscal Year 1999 and beyond, at least 75 percent of Federal agency light-duty vehicle acquisitions must be AFVs (law enforcement, security, and emergency vehicles are exempt). The Energy Conservation Reauthorization Act of 1998 requires each Federal agency to report annually on the percentage of AFVs acquired. It also requires that each agency's report be placed on a publicly available Web site on the Internet, and that the availability of the report (including the Web site address) be published in the Federal Register.

**ADDRESSES:** Address all comments concerning this notice to Marguerite A. Downey, Environmental Specialist, Environmental Management Policy, United States Postal Service, 475 L'Enfant Plaza SW., Room 1P830, Washington, DC 20260-2810.

**FOR FURTHER INFORMATION CONTACT:** Marguerite A. Downey, 202-268-5073.

**SUPPLEMENTARY INFORMATION:** Interested parties may view the United States Postal Service's annual report at the following Internet Web site: <http://www.usps.com/environment/envnews/compliance.htm>. You may submit comments and data by sending electronic mail (e-mail) to: [MDOWNEY1@email.usps.gov](mailto:MDOWNEY1@email.usps.gov).

**Authority:** Sec. 310, Pub. L. 105-388.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 02-32180 Filed 12-20-02; 8:45 am]

BILLING CODE 7710-12-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46996; File No. SR-Amex-2002-98]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Extend the Suspension of Exchange Transaction Charges for Certain Exchange-Traded Funds

December 13, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 29, 2002, the American Stock Exchange

LLC ("Amex") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to extend until December 31, 2002 the suspension of Exchange transaction charges for specialist, Registered Trader and broker-dealer orders for the iShares Lehman 1-3 year Treasury Bond Fund; iShares Lehman 7-10 year Treasury Bond Fund;

Treasury 10 FITR ETF; Treasury 5 FITR ETF; Treasury 2 FITR ETF; and Treasury 1 FITR ETF. Proposed new language is *italicized*; proposed deletions are in [brackets].

\* \* \* \* \*

#### Amex Equity Fee Schedule

##### I. Transaction Charges

No change.

##### II. Regulatory Fee

No Change.

Notes:

1. and 2. No change.

3. Customer transaction charges for the following Portfolio Depositary Receipts, Index Fund Shares, and Trust Issued Receipts have been suspended:

DIA—DIAMONDS®  
 QQQ—Nasdaq-100® Index Tracking Stock  
 SPY—SPDRs®  
 IVV—iShares S&P 500  
 MDY—MidCap SPDRs  
 XLY—Select Sector SPDR—Consumer Discretionary  
 XLP—Select Sector SPDR—Consumer Staples  
 XLE—SPDR—Energy  
 XLF—Select Sector SPDR—Financial  
 XLV—Select Sector SPDR—Health Care  
 XLI—Select Sector SPDR—Industrial  
 XLB—Select Sector SPDR—Materials  
 XLK—Select Sector SPDR—Technology  
 XLU—Select Sector SPDR—Utilities

BHH—B2B Internet HOLDRs™  
 BBH—Biotech HOLDRs  
 BDH—Broadband HOLDRs  
 EKH—Europe 2001 HOLDRs  
 IAH—Internet Architecture HOLDRs  
 HHH—Internet HOLDRs  
 IIH—Internet Infrastructure HOLDRs  
 MKH—Market 2000+ HOLDRs  
 OIH—Oil Service HOLDRs  
 PPH—Pharmaceutical HOLDRs  
 RKH—Regional Bank HOLDRs  
 RTH—Retail HOLDRs  
 SMH—Semiconductor HOLDRs  
 SWH—Software HOLDRs  
 TTH—Telecom HOLDRs  
 UTH—Utilities HOLDRs  
 WMH—Wireless HOLDRs  
 SHY—iShares Lehman 1-3 Year Treasury Bond Fund  
 IEF—iShares Lehman 7-10 Year Treasury Bond Fund  
 TLT—iShares Lehman 20+ Year Treasury Bond Fund  
 LQD—iShares GS \$ InvesTop Corporate Bond Fund  
 TFT—Treasury 1 FITR ETF  
 TOU—Treasury 2 FITR ETF  
 TFI—Treasury 5 FITR ETF  
 TTE—Treasury 10 FITR ETF

Until [November 30] *December 31*, 2002, transaction charges also have been suspended in SHY, IEF, TFT, TOU, TFI and TTE for specialist, Registered Trader and broker dealer orders.

\* \* \* \* \*

#### 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 Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements

may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to extend until December 31, 2002 the suspension of transaction charges in iShares Lehman 1-3 year Treasury Bond Fund (Symbol: SHY); iShares Lehman 7-10 year Treasury Bond Fund (Symbol: IEF);

Treasury 10 FITR ETF (Symbol: TTE); Treasury 5 FITR ETF (TFI); Treasury 2 FITR ETF (TOU); and Treasury 1 FITR ETF (TFT) for specialist, Registered Trader and broker-dealer orders. The Exchange previously filed a suspension in such charges until November 30, 2002.<sup>3</sup>

The Exchange believes a suspension of fees for these securities is appropriate to enhance the competitiveness of executions in these securities on the Amex. The Exchange will reassess the fee suspension as appropriate, and will file any modification to the fee suspension with the Commission

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4

<sup>3</sup> See Securities Exchange Act Release No. 46765 (November 1, 2002), 67 FR 68893 (November 13, 2002)(SR-Amex-2002-91).

pursuant to section 19(b)(3)(A) of the 1934 Act.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>4</sup> in general, and furthers the objectives of section 6(b)(4)<sup>5</sup> in particular, in that it provides 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 Exchange does not believe that the proposed rule change will impose any burden on competition.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6)<sup>7</sup> thereunder because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission 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, or such short time as designated by the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

The Amex has requested that the Commission waive the five-day pre-filing notice and the 30-day operative

delay. The Commission believes that waiving the five-day pre-filing notice and the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that fee suspensions for the exchange-trade funds that are the subject of this filing have been previously filed with the Commission.<sup>8</sup> Further, extension of the fee suspension for specialist, Registered Trader, and broker-dealer orders will permit the fee suspensions to continue uninterrupted. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>9</sup>

## 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 at 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-Amex-2002-98 and should be submitted by January 13, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-32186 Filed 12-20-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3469]

#### State of Alaska; Amendment #1

In accordance with a notice received from the Federal Emergency Management Agency, dated December 11, 2002, the above numbered declaration is hereby amended to include Delta/Greely Regional Educational Attendance Area (REAA) and Fairbanks North Star Borough in the State of Alaska as a disaster area due to damages caused by an earthquake occurring on November 3, 2002 and continuing through November 10, 2002.

In addition, applications for economic injury loans from small businesses located in Yukon-Koyukuk REAA and Denali Borough in the State of Alaska may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is January 17, 2003, and for economic injury the deadline is August 18, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 12, 2002.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 02-32254 Filed 12-20-02; 8:45 am]

**BILLING CODE 8025-01-P**

## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #P002]

#### State of North Carolina

As a result of the President's major disaster declaration for Public Assistance on December 12, 2002, the U.S. Small Business Administration is activating its disaster loan program only for private non-profit businesses that provide essential services of a governmental nature. I find that Alamance, Alexander, Anson, Burke, Cabarrus, Catawba, Chatham, Cleveland, Davidson, Durham, Franklin, Gaston, Granville, Guilford, Halifax, Harnett, Iredell, Lee, Lincoln, McDowell, Mecklenburg, Montgomery, Moore, Nash, Orange, Person, Randolph, Rowan, Rutherford, Stanly, Union, Vance, and Wake Counties in the State of North Carolina constitute a disaster area due to damages caused by a severe ice storm occurring from December 4, 2002, and continuing through December 6, 2002. Applications for loans for

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> See *supra* note 3.

<sup>9</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

physical damage as a result of this disaster may be filed until the close of business on February 10, 2003 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Non-profit organizations without credit available elsewhere .....	3.324
Non-profit organizations with credit available elsewhere ...	5.500

The number assigned to this disaster for physical damage is P00211.

(Catalog of Federal Domestic Assistance Program Nos. 59008)

Dated: December 13, 2002.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 02-32252 Filed 12-20-02; 8:45 am]

**BILLING CODE 8025-01-P**

## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3467]

#### State of Ohio; Amendment #1

In accordance with a notice received from the Federal Emergency Management Agency, dated December 12, 2002, the above numbered declaration is hereby amended to include Cuyahoga and Summit Counties in the State of Ohio as a disaster area due to damages caused by severe storms and tornadoes occurring on November 10, 2002.

In addition, applications for economic injury loans from small businesses located in Geauga, Lake, Lorain, Medina, Portage, Stark and Wayne Counties in the State of Ohio may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is January 17, 2003, and for economic injury the deadline is August 18, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: December 12, 2002.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 02-32253 Filed 12-20-02; 8:45 am]

**BILLING CODE 8025-01-P**

## SOCIAL SECURITY ADMINISTRATION

### Ticket to Work and Work Incentives Advisory Panel Teleconference

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice of teleconference.

**DATES:** Tuesday January 14, 2003.

*Teleconference:* Tuesday January 14, 2003, 1 p.m. to 3 p.m. eastern time.

### Ticket to Work and Work Incentives Advisory Panel Conference Call

*Call-in number:* 877-917-1549.

*Pass code:* PANEL.

*Leader/Host:* Sarah Wiggins Mitchell.

#### SUPPLEMENTARY INFORMATION:

*Type of meeting:* This teleconference meeting is open to the public. The interested public is invited to participate by calling into the teleconference at the number listed above. Public testimony will not be taken.

*Purpose:* In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces this teleconference meeting of the Ticket to Work and Work Incentives Advisory Panel (the Panel). Section 101(f) of Public Law 106-170 establishes the Panel to advise the President, the Congress and the Commissioner of SSA on issues related to work incentives programs, planning and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

*Agenda:* The Panel will deliberate on the implementation of TWWIIA and conduct Panel business. The Panel will be discussing follow up items from their November Quarterly meeting, including a discussion of avenues to improve recruitment and retention of Employment Networks.

The agenda for this meeting will be posted on the Internet at <http://www.ssa.gov/work/panel/> one week prior to the teleconference or can be received in advance electronically or by fax upon request.

*Contact Information:* Records are being kept of all Panel proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the TWWIIA Panel staff by:

- Mail addressed to Ticket to Work and Work Incentives Advisory Panel

Staff, Social Security Administration, 400 Virginia Avenue, SW., Suite 700, Washington, DC 20024;

- Telephone contact with Kristen Breland at (202) 358-6430;

- Fax at (202) 358-6440;

- Or e-mail to

[TWWIIAPanel@ssa.gov](mailto:TWWIIAPanel@ssa.gov).

Dated: December 16, 2002.

**Deborah M. Morrison,**

*Designated Federal Officer.*

[FR Doc. 02-32218 Filed 12-20-02; 8:45 am]

**BILLING CODE 4191-02-P**

## TENNESSEE VALLEY AUTHORITY

### Environmental Impact Statement for Addition of Electric Generation Baseload Capacity in Tennessee

**AGENCY:** Tennessee Valley Authority (TVA).

**ACTION:** Cancellation notice.

On February 20, 2002, TVA published in the **Federal Register** (67 FR 7732-7733) a Notice of Intent (NOI) to prepare an Environmental Impact Statement to assess the impact of a proposal made by Pickwick Power, LLC (PPLLC) to build and operate a coal-fired generating plant in Tennessee. PPLLC had proposed a site in Hardin County near Savannah, Tennessee, near the west shore of the Tennessee River at mile 203.

The proposed plant would have supplied intermediate or baseload capacity to the TVA electric generation system to meet power demands. However, current market conditions make further consideration of the PPLLC project unnecessary at this time. Therefore, the February 20th NOI is hereby rescinded.

#### FOR FURTHER INFORMATION CONTACT:

Peter K. Scheffler, NEPA Administration, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1499; telephone (865) 632-8040 or e-mail [pkscheffler@tva.gov](mailto:pkscheffler@tva.gov).

Dated: December 13, 2002.

**Kathryn J. Jackson,**

*Executive Vice President, River System Operations and Environment.*

[FR Doc. 02-32187 Filed 12-20-02; 8:45 am]

**BILLING CODE 8120-08-P**

**DEPARTMENT OF TRANSPORTATION****Federal Highway Administration****Environmental Impact Statement/  
Alternatives Analysis: Westchester  
and Rockland Counties, NY, Tappan  
Zee Bridge/Interstate-287 Corridor**

**AGENCIES:** Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), United States Department of Transportation

**ACTION:** Notice of intent to prepare an Alternatives Analysis (AA) and an Environmental Impact Statement (EIS) for the I-287 Corridor between Suffern, New York (Rockland County) and Port Chester, New York (Westchester County). Included within the corridor is the Tappan Zee Bridge.

**SUMMARY:** FHWA and FTA, in cooperation with the New York State Thruway Authority (NYSTA) and the Metro-North Railroad, a subsidiary of the Metropolitan Transportation Authority (MTA/MNR), will prepare an AA and an EIS for the I-287 Corridor in Westchester and Rockland Counties, NY, which includes the Tappan Zee Bridge, the Corridor's most important infrastructure element. The FTA and FHWA are the federal lead agencies under NEPA and the NYSTA and MTA/MNR are the project sponsors. The AA and the DEIS are being prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, and implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500-1508), the FTA/FHWA Environmental Impact regulations (23 CFR part 771), and the FTA/FHWA Statewide Planning/Metropolitan Planning regulations (23 CFR part 450). This study will also comply with the requirements of the National Historic Preservation Act of 1966, as amended, section 4(f) of the 1966, U.S. Department of Transportation Act, the 1990 Clean Air Act Amendments, the Executive Order 12898 on Environmental Justice, and other applicable statutes, rules, and regulations. The EIS and the environmental review process will also satisfy requirements of the New York State Environmental Quality Review Act (SEQRA); this Notice of intent eliminates the need for a positive declaration under that statute.

The purpose for the study is to identify and evaluate alternative multimodal highway and transit proposals to address the transportation needs of the Tappan Zee Bridge/I-287 Corridor (the project). The study will also take into account the structural

needs of the Tappan Zee Bridge, as well as other existing infrastructure in the Corridor. The AA will document the identification, evaluation and screening of a large number of possible actions to produce a reasonable range of alternatives that meet the proposed Project's purpose and need. The DEIS (which will incorporate the findings of the AA) will then document the evaluation of those identified alternatives in terms of their environmental impacts and other relevant factors as compared to a baseline case (*i.e.*, the No Build alternative). A preferred alternative(s) will be identified in a Final EIS (FEIS).

**FOR FURTHER INFORMATION CONTACT:**

Robert Arnold, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 7th Floor, Clinton Avenue and North Pearl Street, Albany, New York, 12207. Telephone: (518) 431-4127; or Irwin B. Kessman, Director of Planning and Program Development, Federal Transit Administration, One Bowling Green, Room 429, New York, NY 10004 Telephone: (212) 668-2177; or Christopher A. Waite, Executive Project Manager, New York State Thruway Authority, 200 Southern Boulevard, Albany, NY 12209. Telephone: (518) 436-3190; or Janet M. Mainiero, Deputy Project Manager, MTA Metro-North Railroad, 347 Madison Avenue, New York, NY 10017. Telephone: (212) 340-4085.

**SUPPLEMENTARY INFORMATION:****1. Scoping**

FHWA and FTA invite interested individuals, organizations, and federal, state, and local agencies to provide comments on the scope of the Tappan Zee Bridge/I-287 Corridor AA/EIS. Comments should suggest alternatives that meet the Project's transportation goals and objectives and have the potential to reduce environmental impacts. Comments should also focus on specific environmental issues and other relevant factors that should be evaluated during the course of the Project.

To assist interested parties in formulating their comments, a scoping information packet has been prepared and is available upon request from the FHWA, FTA, NYSTA, or MTA/MNR representatives identified above or online at the project's Web site ([www.tzbsite.com](http://www.tzbsite.com)). The information packet includes the project's purpose and need, goals and objectives, a preliminary list of alternatives, and environmental areas that will be addressed during the course of the

study. An outline of the public participation program is also contained in the information packet.

Three public scoping meetings will be conducted, one each in Westchester, Rockland, and Orange Counties, to solicit public comments on the scope of the AA/DEIS. Each scoping meeting will run from 4-9 p.m. and consist of an informal open house setting and two formal presentations. Formal presentations will be made at 4:30 p.m. and again at 6:30 p.m. after which comments will be received in the group forum. Those wishing to speak must sign up by 8:45 pm. A court reporter will be available to record the formal meeting and public comments. The public scoping meetings will be held in the following locations:

*Westchester County Public Scoping Meeting:* Tuesday, January 14, 2003, Sleepy Hollow High School, 200 North Broadway, Sleepy Hollow, NY 10591.

*Rockland County Public Scoping Meeting:* Wednesday, January 15, 2003, Adler Room, Palisades Mall, 1000 Palisades Center, West Nyack, NY 10994.

*Orange County Public Scoping Meeting:* Thursday, January 16, 2003, Orange County Community College, 115 South Street, Middletown, NY 10940.

The public comment period will be open for a minimum of 45 days following the January 16 meeting. Comments will be accepted until March 4, 2003.

The project sponsors will also conduct two governmental agency scoping meetings, one each in New York City and Albany, to solicit input and comments from local, state and federal agencies. The agency meetings will be held at the following times and locations:

January 21, 2003, 2-4 p.m., MTA/MNR Headquarters, 347 Madison Avenue, New York, NY 10017.

January 22, 2003, 1-3 p.m., New York State Thruway Authority, 200 Southern Boulevard, Albany, NY 12209.

**2. Description of the Project Area and Transportation Needs**

The Tappan Zee Bridge/I-287 Corridor extends from the I-287/I-87 interchange in Suffern to the I-287/I-95 interchange in Port Chester for approximately 30 miles through Rockland and Westchester Counties. The Corridor includes the lifeline 3.1 mile-long Tappan Zee Bridge crossing of the Hudson River, and encompasses a critical section of the New York State Thruway, as well as the entire Cross Westchester Expressway (CWE). The Corridor intersects all five of MNR's commuter rail lines (Port Jervis, Pascack

Valley, Hudson, Harlem and New Haven). However, MNR's commuter rail lines in the Corridor are all oriented north and south and none cross the Hudson River.

The Tappan Zee Bridge opened to traffic in 1955 and carried an average of 18,000 vehicles daily. Today, approximately 135,000 vehicles cross the bridge on an average weekday, with volumes as high as 170,000 vehicles on some peak days. During the past 20 years, traffic volumes have grown significantly in the Corridor, by over 50 percent on the CWE and by more than 70 percent on the Tappan Zee Bridge. As a result, the Corridor experiences varying levels of traffic congestion throughout its 30-mile length. The steady increase in traffic demand over the years, together with only limited increases in roadway capacity and a paucity of east-west modal alternatives, have resulted in continual increases in travel time and delay. These problems are most acute in the vicinity of the Tappan Zee Bridge itself during the eastbound morning and westbound evening peak periods. This congestion is projected to worsen, detrimentally affecting mobility and the economic health and quality of life in the Corridor.

In addition to addressing the mobility needs in the Tappan Zee Bridge/I-287 Corridor, the Project will also address the structural needs of the Tappan Zee Bridge, the Corridor's most important infrastructure element.

### 3. Alternatives Being Considered

Based on previous studies, as well as numerous public meetings convened to discuss the matter, a preliminary list of alternatives has been developed to address the mobility and structural needs of the Corridor. The potential alternatives identified to date, which are expected to be supplemented during the public scoping process, have been organized into four broad categories as follows:

- *Transportation Demand/System Management Strategies*: these are generally lower cost management strategies intended to impact travel demand, choice of travel mode, or time of travel; or actions to improve the overall efficiency of the existing transportation system.
- *New/Improved Transit Services*: these are generally actions to improve existing transit services or add new ones that do not require the construction of major new transportation infrastructure in the Corridor.
- *River Crossing Improvements*: these include all of the various proposals put forward to rehabilitate or replace the

existing Tappan Zee Bridge with improved roadway and transit facilities. Bridge, tunnel, and combination bridge and tunnel solutions have been suggested.

- *Corridor Improvements*: these are the various proposals to upgrade and/or add new transportation infrastructure elsewhere in the Corridor such as new commuter rail, light rail or guided busway.

All alternatives will include maintaining the Interstate highway link. Through a process of technical evaluation and public input, the relatively large number of alternatives developed in the early stages of the AA's program will be reduced to a smaller set considered most likely to achieve the Project's goals and objectives. The reduced set of alternatives will be evaluated in the DEIS along with the No Build alternative.

### 4. Probable Effects

Impacts of the final set of Tappan Zee Bridge/I-287 Corridor-wide alternatives will be evaluated in the DEIS will summarize the results of coordination with federal, state, and local agencies; present the appropriate federal, state, and local regulations and policies; inventory and compile previous studies; describe the methodology used to assess impacts; identify the affected environment; predict and analyze the construction-related (short-term) and operational (long-term) impacts (direct, indirect, and cumulative) of reasonable alternatives; and identify opportunities and measures for mitigating significant adverse impacts.

- Specific scopes for the environmental studies to be conducted for the DEIS will be established during the public and agency scoping process. The DEIS analysis will cover relevant aspects of the natural and human environment expected to be affected by each alternative.

### 5. FHWA/FTA Procedures

Upon completion, the AA, and subsequently the DEIS, will be available for public and agency review and comment. Public hearings will be held on the DEIS within the study area. On the basis of the AA/DEIS and the public and Agency comments, a preferred alternative will be selected and fully described in the FEIS. Following completion of the FEIS a Record of Decision (ROD) will be issued by the federal lead agencies.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372

regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 315; 23 CFR 771.123

Dated: December 13, 2002.

**David W. Nardone,**

*Senior Operations Engineer, Federal Highway Administration, Albany, New York.*

[FR Doc. 02-32258 Filed 12-20-02; 8:45 am]

**BILLING CODE 4910-22-M**

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA 2002-13272]

### Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on September 9, 2002 (67 FR 57270-57271).

**DATES:** Comments must be submitted on or before January 22, 2003.

**FOR FURTHER INFORMATION CONTACT:** George Person at the National Highway Traffic Safety Administration, Office of Defects Investigation, 202-366-5210, 400 Seventh Street, SW., Room 5326, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

*Agency:* National Highway Traffic Safety Administration.

*Title:* Defect and Noncompliance Reports, Part 573.

*OMB Number:* 2127-0004.

*Type of Request:* Renewal.

*Abstract:* NHTSA's statute at 49 U.S.C. sections 30112 and 30116 through 30121 requires manufacturers of motor vehicles and motor vehicle equipment to recall and remedy their products that do not comply with applicable Federal motor vehicle safety standards or that contain a defect related to motor vehicle safety. The manufacturer must notify NHTSA, owners, purchasers, and dealers of such defects and noncompliances.

To implement this authority, in 1978 NHTSA promulgated 49 CFR part 573,

Defect and Noncompliance Reports, (with amendments through 2002). This regulation sets out the following requirements, among others:

(1) Manufacturers are to provide specific information in reports that must be filed with NHTSA within five working days of a decision that a safety-related defect or noncompliance exists;

(2) Manufacturers are to submit quarterly reports to NHTSA on the progress of recall campaigns for six consecutive calendar quarters beginning with the quarter in which the campaign was initiated; and

(3) Manufacturers are to retain records of owners or purchasers of their products that have been involved in a recall campaign.

*Affected Public:* All manufacturers of motor vehicles and motor vehicle equipment are required to comply with these requirements whenever a decision has been made that their products contain a defect or noncompliance. There have been more than 700 such reports provided annually to NHTSA by slightly more than 200 manufacturers in recent years, however, NHTSA estimates that about 26,000 manufacturers could be affected by this requirement. Additionally, all manufacturers must maintain records of the names and addresses of the owners of the products affected by the recalls.

*Estimated Total Annual Burden:* The annual burden is estimated to be 15,844 hours.

*Address:* Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; the accuracy of the Agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued on: December 17, 2002.

**Kenneth N. Weinstein,**

*Associate Administrator for Enforcement.*

[FR Doc. 02-32184 Filed 12-20-02; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

December 16, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before January 22, 2003 to be assured of consideration.

#### Bureau of Alcohol, Tobacco and Firearms (BATF)

*OMB Number:* 1512-0399.

*Form Number:* ATF Form 5400.21.

*Type of Review:* Extension.

*Title:* Applications Permit For User Limited Special Fireworks (18 U.S.C. Chapter 40, Explosives).

*Description:* Form is used to verify the eligibility of and grant permission to the holder to buy or transport explosives in interstate commerce on a one-time basis.

*Respondents:* Business or other for-profit, Individuals or households.

*Estimated Number of Respondents:* 1,800.

*Estimated Burden Hours Per Respondent:* 18 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 540 hours.

*Clearance Officer:* Jacqueline White (202) 927-8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

*OMB Reviewer:* Joseph F. Lackey, Jr., (202) 395-7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*

[FR Doc. 02-32189 Filed 12-20-02; 8:45 am]

**BILLING CODE 4810-31-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

[CO-68-87; CO-69-87; CO-18-90]

#### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulations, CO-68-87 and CO-69-87 (TD 8352), Final Regulations Under Sections 382 and 383 of the Internal Revenue Code of 1986; Pre-change Attributes, and CO-18-90 (TD 8531), Final Regulations Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards (§§ 1.382-4 and 1.382-2T).

**DATES:** Written comments should be received on or before February 21, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Larnice Mack, (202) 622-3179, or through the internet ([Larnice.Mack@irs.gov](mailto:Larnice.Mack@irs.gov)), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

#### SUPPLEMENTARY INFORMATION:

*Title:* CO-68-87 and CO-69-87 (TD 8352), Final Regulations Under Sections 382 and 383 of the Internal Revenue Code of 1986; Pre-change Attributes, and CO-18-90 (TD 8531), Final Regulations Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards.

*OMB Number:* 1545-1120.

*Regulation Project Number:* CO-68-87; CO-69-87; CO-18-90.

*Abstract:* (CO-68-87 and CO-69-87) These regulations require reporting by a corporation after it undergoes an "ownership change" under Code

sections 382 and 383. Corporations required to report under these regulations include those with capital loss carryovers and excess credits. (CO-18-90) These regulations provide rules for the treatment of options under Code section 382 for purposes of determining whether a corporation undergoes an ownership change. The regulation allows for certain elections for corporations whose stock is subject to options.

*Current Actions:* There is no change to these existing regulations.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 75,150.

*Estimated Time Per Respondent:* 2 hours, 56 minutes.

*Estimated Total Annual Burden Hours:* 220,575.

*The following paragraph applies to all of the collections of information covered by this notice:*

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 16, 2002.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 02-32153 Filed 12-20-02; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 8887

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8887, Health Insurance Credit Eligibility Certificate.

**DATES:** Written comments should be received on or before February 21, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622-3945, or through the internet ([CAROL.A.SAVAGE@irs.gov](mailto:CAROL.A.SAVAGE@irs.gov)), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

#### SUPPLEMENTARY INFORMATION:

*Title:* Health Insurance Credit Eligibility Certificate.

*OMB Number:* 1545-1808.

*Form Number:* 8887.

*Abstract:* Form 8887 is used to notify a TAA (trade adjustment assistance), alternative TAA, or PBGC (Pension Benefit Guaranty Corporation) recipient that they may qualify for the Health Insurance Credit.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 300,000.

*Estimated Time Per Respondent:* 25 minutes.

*Estimated Total Annual Burden Hours:* 123,000.

*The following paragraph applies to all of the collections of information covered by this notice:*

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 16, 2002.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 02-32154 Filed 12-20-02; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 8883

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed



and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8883, Asset Allocation Statement Under Section 338.

**DATES:** Written comments should be received on or before February 21, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622-3945, or through the Internet (CAROL.A.SAVAGE@irs.gov.), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Asset Allocation Statement Under Section 338.

*OMB Number:* 1545-1806.

*Form Number:* 8883.

*Abstract:* Form 8883 is used to report information regarding transactions involving the deemed sale of corporate assets under section 338.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 201.

*Estimated Time Per Respondent:* 24 hours, 7 minutes.

*Estimated Total Annual Burden Hours:* 4,849.

*The following paragraph applies to all of the collections of information covered by this notice:*

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of

information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 16, 2002.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 02-32155 Filed 12-20-02; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**Proposed Collection; Comment Request for Form 8569**

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8569, Geographic Availability Statement.

**DATES:** Written comments should be received on or before February 21, 2003 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622-3945, or through the Internet (CAROL.A.SAVAGE@irs.gov.), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Geographic Availability Statement.

*OMB Number:* 1545-0973.

*Form Number:* 8569.

*Abstract:* This form is used to collect information from applicants for the Senior Executive Service Candidate Development Program and other executive positions. The form states an applicant's minimum area of availability and is used for future job placement consideration.

*Current Actions:* There are no changes being made to Form 8569 at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals and the Federal Government.

*Estimated Number of Respondents:* 500.

*Estimated Time Per Respondent:* 10 minutes.

*Estimated Total Annual Burden Hours:* 84.

*The following paragraph applies to all of the collections of information covered by this notice:* An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 16, 2002.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 02-32156 Filed 12-20-02; 8:45 am]

**BILLING CODE 4830-01-P**



# Federal Register

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**Monday,  
December 23, 2002**

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**Part II**

## **Environmental Protection Agency**

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**40 CFR Part 63**

**National Emission Standards for  
Hazardous Air Pollutants for Iron and  
Steel Foundries; Proposed Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

[OAR-2002-0034; FRL-7416-4]

RIN 2060-AE43

**National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes national emission standards for hazardous air pollutants (NESHAP) for iron and steel foundries. The EPA has identified iron and steel foundries as a major source of hazardous air pollutant (HAP) emissions. These proposed standards will implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emissions standards reflecting application of the maximum achievable control technology (MACT).

The HAP emitted by facilities in the iron and steel foundries source category include metal and organic compounds.

For iron and steel foundries that produce low alloy metal castings, metal HAP emitted are primarily lead and manganese with smaller amounts of cadmium, chromium, and nickel. For iron and steel foundries that produce high alloy metal or stainless steel castings, metal HAP emissions of chromium and nickel can be significant. Organic HAP emissions include acetophenone, benzene, cumene, dibenzofurans, dioxins, formaldehyde, methanol, naphthalene, phenol, pyrene, toluene, triethylamine, and xylene. Exposure to these substances has been demonstrated to cause adverse health effects, including cancer and chronic or acute disorders of the respiratory, reproductive, and central nervous systems. The proposed NESHAP would reduce nationwide HAP emissions from iron and steel foundries by over 900 tons per year (tpy).

**DATES:** *Comments.* Submit comments on or before February 21, 2003.

*Public Hearing.* If anyone contacts the EPA requesting to speak at a public hearing by January 13, 2003, a public hearing will be held on January 22, 2003.

**ADDRESSES:** *Comments.* Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

*Public Hearing.* If a public hearing is held, it will be held at the new EPA facility complex in Research Triangle Park, NC at 10 a.m. Persons interested in attending the hearing or wishing to present oral testimony should notify Cassie Posey, Metals Group (MD-C439-02), U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541-0069, at least 2 days in advance of the hearing.

**FOR FURTHER INFORMATION CONTACT:** Kevin Cavender, Metals Group, (MD-C439-02), Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541-2364, electronic mail (e-mail) address, [cavender.kevin@epa.gov](mailto:cavender.kevin@epa.gov).

**SUPPLEMENTARY INFORMATION:**

*Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	NAICS code*	Examples of regulated entities
Industry .....	331511	Iron foundries. Iron and steel plants. Automotive and large equipment manufacturers.
	331512	Steel Investment Foundries
	331513	Steel foundries (except investment).
Federal government .....	.....	Not affected.
State/local/tribal government .....	.....	Not affected.

\*North American Information Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.7682 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*Docket.* The EPA has established an official public docket for this action under Docket ID No. OAR-2002-0034. The official public docket is the collection of materials that is available for public viewing in the Iron and Steel Foundries NESHAP Docket at the EPA Docket Center (Air Docket), EPA West, Room B-108, 1301 Constitution Avenue, NW., Washington, DC 20004. The Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through

Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

*Electronic Access.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, select "search" and key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA dockets. Information claimed as confidential business information (CBI) and other information whose disclosure is

restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change unless the comment contains copyrighted material, CBI, or other information whose disclosure is

restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

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

**Comments.** You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments submitted after the close of the comment period will be marked "late." The EPA is not required to consider these late comments.

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

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket>, and follow the online

instructions for submitting comments. Once in the system, select "search" and key in Docket ID No. OAR-2002-0034. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to [air-and-r-docket@epa.gov](mailto:air-and-r-docket@epa.gov), Attention Docket ID No. OAR-2002-0034. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in this document. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

**By Mail.** Send your comments (in duplicate, if possible) to: Iron and Steel Foundries NESHAP Docket, EPA Docket Center (Air Docket), U.S. EPA West, (MD-6102T), Room B-108, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OAR-2002-0034.

**By Hand Delivery or Courier.** Deliver your comments (in duplicate, if possible) to: EPA Docket Center, Room B-108, U.S. EPA West, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. OAR-2002-0034. Such deliveries are only accepted during the Docket Center's normal hours of operation.

**By Facsimile.** Fax your comments to: (202) 566-1741, Attention Iron and Steel Foundries NESHAP Docket, Docket ID No. OAR-2002-0034.

**CBI.** Do not submit information that you consider to be CBI through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404-02), U.S. EPA, 109 TW Alexander Drive, Research Triangle Park, NC 27709, Attention Docket ID No. OAR-2002-0034. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically

within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

**Worldwide Web (WWW).** In addition to being available in the docket, an electronic copy of today's proposed rule is also available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the proposed rule will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

**Outline.** The information presented in this preamble is organized as follows:

- I. Background
  - A. What Is the Statutory Authority for NESHAP?
  - B. What Criteria Are Used in the Development of NESHAP?
  - C. What Processes Are Used at Iron and Steel Foundries?
  - D. What HAPs are Emitted and how are they Controlled?
  - E. What Are the Health Effects Associated With Emissions From Iron and Steel Foundries?
- II. Summary of the Proposed Rule
  - A. What Are the Affected Sources?
  - B. What Are the Proposed Emissions Limitations?
  - C. What Are the Proposed Work Practice Standards?
  - D. What Are the Proposed Operation and Maintenance Requirements?
  - E. What Are the Proposed Requirements for Demonstrating Initial and Continuous Compliance?
  - F. What Are the Proposed Notification, Recordkeeping, and Reporting Requirements?
  - G. What Are the Proposed Compliance Deadlines?
- III. Rationale for Selecting the Proposed Standards
  - A. How Did We Select the Affected Sources?
  - B. What Other Emissions Sources Did We Consider?
  - C. How Did We Select the Pollutants?
  - D. How Did We Determine the Basis and Level of the Proposed Standards for Emissions Sources in the Metal Casting Department?
  - E. How Did We Determine the Basis and Level of the Proposed Standards for Emissions Sources in the Mold and Core Making Department?
  - F. How Did We Select the Proposed Initial Compliance Requirements?
  - G. How Did We Select the Proposed Continuous Compliance Requirements?
  - H. How Did We Select the Proposed Notification, Recordkeeping, and Reporting Requirements?

- IV. Summary of Environmental, Energy, and Economic Impacts
- A. What Are the Air Quality Impacts?
  - B. What Are the Cost Impacts?
  - C. What Are the Economic Impacts?
  - D. What Are the Non-air Health, Environmental, and Energy Impacts?
- V. Solicitation of Comments and Public Participation
- VI. Statutory and Executive Order Reviews
- A. Executive Order 12866, Regulatory Planning and Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. *et seq.*
  - D. Unfunded Mandates Reform Act of 1995
  - E. Executive Order 13132, Federalism
  - F. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
  - G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
  - H. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer Advancement Act

## I. Background

### A. What Is the Statutory Authority for NESHAP?

Section 112 of the CAA requires the EPA to establish technology-based regulations for all categories and subcategories of major sources emitting one or more of the HAP listed in section 112(b). Major sources are those that emit or have the potential to emit at least 10 tpy of any single HAP or 25 tpy of any combination of HAP. The EPA may later develop additional standards under section 112(f) to address residual risk that may remain even after application of the technology-based controls.

Area sources are stationary sources of HAP that are not major sources. The regulation of area sources is discretionary. If there is a finding of a threat of adverse effects on human health or the environment, then the source category can be added to the list of area sources to be regulated.

Section 112(c) of the CAA requires us to list all categories of major and area sources of HAP for which we would develop national emissions standards. We published the initial list of source categories on July 16, 1992 (57 FR 31576). "Iron Foundries" and "Steel Foundries" were two of the source categories on the initial list. The 1992 listing of these source category is based on our determination that iron foundries and steel foundries may reasonably be anticipated to emit one or more HAP listed in section 112(b) in quantities sufficient to be major sources. We combined these two categories into one

category, "Iron and Steel Foundries." We believe this is reasonable because of the similarities in processes, emissions, and controls. Also, several foundries pour both iron and steel. This proposed rule will apply to each new and existing iron and steel foundry.

Approximately 650 iron and steel foundries exist in the U.S. Of these, about 100 iron and steel foundries are anticipated to be major sources of HAP. Most of these major sources are foundries that are operated by manufacturers of automobiles and large industrial equipment and by suppliers of these manufacturers.

### B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the maximum achievable control technology (MACT).

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emissions control that is achieved in practice by the best controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emissions limitation achieved by the best-performing 12 percent of existing sources in the category of subcategory (or the best performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, any health and environmental impacts, and energy requirements.

### C. What Processes Are Used at Iron and Steel Foundries?

Iron and steel foundries manufacture castings by pouring molten iron or steel melted in a furnace into a mold of a desired shape. The primary processing

units of interest at iron and steel foundries because of their potential to generate HAP emissions are: metal melting furnaces; scrap preheaters; pouring areas; pouring, cooling, and shakeout lines; mold and core making lines; and mold and core coating lines.

### Metal Melting Furnaces

There are three types of furnaces used to melt scrap metal at iron and steel foundries: cupolas, electric arc furnaces, and electric induction furnaces. Cupolas are used exclusively to produce molten iron; electric arc furnaces and electric induction furnaces are used to produce either molten iron or molten steel.

*Cupolas.* A cupola is vertical cylindrical shaft furnace that uses coke and forms of iron and steel, such as scrap and foundry returns, as the primary charge components. The iron and steel are melted through combustion of the coke by a forced upward flow of heated air. Cupolas are equipped with afterburners downstream from the charge to incinerate carbon monoxide (CO), which is a major byproduct of coke combustion. Some of the coke used to fuel the cupola also becomes part of the molten metal, thereby raising the carbon content of the molten metal. Consequently, cupolas are used to produce iron castings; steel castings must have carbon content of less than 1 percent, which cannot be achieved in a cupola.

There are, generally, two distinct cupola design configurations. The differences between the two designs relate to the method of charging. In one configuration, termed above charge gas takeoff, charging is done through a door in the shaft above the level of the charge. Alternatively, in the below charge gas takeoff configuration, the flow of gas is taken from an opening in the side of the shaft below the level of the charge. The latter configuration is more typical of modern cupolas. In either case, the offgas may be directed through a heat exchanger to transfer heat to the inlet air for energy conservation.

Molten metal, along with slag, is tapped from an opening in the bottom of the furnace shaft much like a blast furnace. Tapping is essentially a continuous process, whereas charging is done in batches.

*Electric induction furnaces and scrap preheaters.* An electric induction furnace is a vessel in which forms of iron and steel, such as scrap and foundry returns, are melted through resistance heating by an electric current that is induced in the metal by passing an alternating current through a coil surrounding the metal charge or

surrounding a pool of molten metal at the bottom of the vessel. An electric induction furnace operates in batch mode, an operating cycle consisting of charging, melting the charge, adding an additional charge (backcharging) in some cases and melting that charge, and tapping the molten metal.

Scrap feed for an electric induction furnace is commonly preheated, usually by direct exposure to a gas flame, prior to charging to the furnace. Preheating is done primarily to eliminate volatile substances such as water and residual oil and grease that may vaporize suddenly and cause an explosion if added to a molten charge or heel in the furnace. When preheating is done, the scrap is commonly heated to 800°F or higher because the cost of initial heating with gas is less costly than heating with electricity. A scrap preheater, where used, is considered to be an integral part of the electric induction furnace melting operation.

*Electric arc furnaces.* An electric arc furnace is a vessel in which forms of iron and steel, such as scrap and foundry returns, are melted through resistance heating by an electric current that flows through the arcs formed between electrodes and the surface of the metal and also through the metal between the arc paths. Typically, the electric arc furnace is equipped with a removable cover and charged from the top. Molten metal is tapped from the electric arc furnace by removing the cover and tilting the furnace. An electric arc furnace operates in batch mode as does an electric induction furnace, an operating cycle consisting of charging, melting, backcharging in some cases and melting that charge, and tapping.

#### Pouring, Cooling, and Shakeout Lines

A pouring, cooling, and shakeout line includes three major operations: pouring molten metal into molds, allowing the metal to cool and solidify, and removing the castings from the molds. The most common type of pouring, cooling, and shakeout line is the conveyor or pallet line, in which the pouring ladle is stationary and molds are moved to the ladle by conveyor or rail. After pouring is complete, the molds move along the conveyor or rail through a cooling area, which is often an enclosed tunnel. A less common type of pouring, cooling, and shakeout line is floor or pit pouring, which is used by small to medium sized foundries that do not have sufficient capital to finance mechanization and also by foundries that produce castings too large to be transported by conveyor. In this type of line, molds are placed on an open floor or in a pit, and the pouring ladle is

transported to the molds, generally by overhead pulley. After pouring, the casting is cooled in place.

After castings have solidified, they are removed from the sand molds in a process called shakeout. At most foundries, shakeout is a mechanized process where molds are placed on vibrating grids or conveyors to shake the sand loose from the casting. In some foundries, the castings and molds are separated manually.

#### Mold and Core Making Lines

Most iron and steel foundries pour metal into molds that are made primarily of sand. Molds may also be made of tempered metal (iron or steel) that are filled by gravity (permanent molds) or by centrifugal force (centrifugal casting). Some systems use polystyrene or other low density plastic (foam) patterns and pack sand around the patterns. This type of casting operation is referred to as expendable pattern casting, or the lost foam process since the plastic pattern is volatilized (and/or pyrolyzed) by the molten metal as the castings are poured.

The outer shape of a casting is determined by the shape of the molds. Molds are typically made in two halves that are subsequently joined together. The inner shapes of the casting that cannot be directly configured into the mold halves are created by inserting separately made components called cores, which are almost universally made of sand. Sand cores are often required in sand molds as well as in many permanent mold and centrifugal casting operations.

Most sand molds are made from green sand, which is a mixture of approximately 85 to 95 percent sand, 4 to 10 percent bentonite clay, 2 to 5 percent water, and 2 to 10 percent carbonaceous materials such as powdered coal (commonly called sea coal), petroleum products, cereals, and starches. The composition of green sand is chosen so that the sand will form a stable shape when compacted under pressure, maintain that shape when heated by the molten metal poured, and separate easily from the solidified metal casting. The clay and water bind the sand together. The carbonaceous materials partially volatilize when molten metal is poured into the mold, creating a reducing atmosphere that prevents the surface of the casting from oxidizing while it solidifies.

Some sand molds and most sand cores are bound into shape by plastic- or resin-like chemical substances. Chemical binder systems are used when the shape of the mold or core cannot be made from green sand or when strength

and dimensional stability requirements are too stringent for green sand to provide. Chemically bonded molds and cores are made by first blending the sand and chemicals (mixing), then forming the sand into the desired shape and hardening (curing) the chemical binder to fix the shape. Chemical binder systems are of three types depending on the curing process required:

- Chemicals that cure upon heating (thermosetting),
- Combinations of chemicals that cure by reacting with each other at ambient temperature (self-setting or nobake), and
- Chemicals that react by catalysis upon exposure to a gas at ambient temperature (gas-cured or cold box).

Several systems of each type are available, with the choice of system depending on such features as strength of the mold or core, speed of curing, and shelf life.

#### Mold and Core Coating Lines

Molds and cores are often coated with a finely ground refractory material to provide a smoother surface finish on the casting. We refer to these processes as "coating" operations. The refractory material is applied as a slurry. After coating, the liquid component of the slurry is either allowed to evaporate or, if it is a flammable substance such as alcohol, eliminated by ignition (the light-off process).

#### D. What HAP Are Emitted and How Are They Controlled?

##### Metal Melting Furnace Emissions

Almost all emissions from a cupola are contained in the flow of air exiting the stack of the furnace, which contains particulate matter (PM) and organic compounds in addition to CO. The HAP in PM emissions from cupolas are primarily lead and manganese, with other HAP such as cadmium, chromium, and nickel present in lesser amounts. These HAP originate as impurities or trace elements in the scrap metal fed to the furnace. Organic HAP arise as by-products from combustion of coke and also from incomplete combustion of residual oil and grease on the scrap. Cupola exhaust gases contain acetophenone, polychlorinated dibenzop-dioxins, polychlorinated dibenzofurans, and pyrene. Most cupolas control PM emissions by dedicated baghouses or wet scrubbers. Also, most cupolas employ afterburners, which effectively destroy organic HAP. Another potential source of emissions is the charging door of a cupola in which the gas takeoff is above the charge. However, the cupola is generally

operated with enough vacuum in the shaft to prevent gases from exiting the door during normal operations.

Emissions of PM from electric induction furnaces contain HAP metals such as manganese and lead, but may also contain significant amounts of chromium or nickel if stainless steel or nickel alloy castings are produced. Emissions from scrap preheaters contain PM and organic species that have not been characterized. Emissions from electric induction furnaces and scrap preheaters are controlled by baghouses, cyclones, and wet scrubbers, with emissions from both types of units often controlled by the same device. Organic emissions from scrap preheaters are typically controlled by direct flame heating of the scrap and, at one source, by afterburning the preheater emissions.

Emissions of PM from electric arc furnaces contain HAP metals such as lead and manganese, but may also contain significant amounts of chromium or nickel if stainless steel or nickel alloy castings are produced. Emissions may also include trace levels of organic substances that have not been characterized. Emissions of PM are typically controlled by baghouses. Organic emissions are controlled by natural incineration within the furnace.

#### Pouring, Cooling, and Shakeout Line Emissions

The majority of HAP emissions from pouring, cooling, and shakeout lines are organic HAP created by incomplete combustion of organic material in the mold and core sand. When molten metal comes into contact with organic materials in the sand such as binder chemicals and sea coal, these materials are partially volatilized and incinerated. Due to the limited availability of oxygen in the poured molds, combustion is incomplete, and the mold offgas can contain a wide variety of organic substances. The primary HAP emitted are benzene, formaldehyde, and toluene. The offgases from most molds ignite spontaneously. For floor and pit pouring, the offgas does not always spontaneously flare but is ignited by applying a flame to the mold's vent locations. Aside from lighting-off mold vents, three foundries use add-on controls to further reduce organic emissions from pouring, cooling, and shakeout lines. In addition to organic emissions, pouring lines are a source of metal HAP emissions. Metal HAP contained in the molten metal is emitted as metal fumes when the metal is poured into the molds. Baghouses and scrubbers are used to control metal HAP emissions at several pouring lines.

#### Mold and Core Making and Mold and Core Coating Line Emissions

Mold making using green sand produces virtually no emissions. The use of chemical binder systems, by contrast, can produce significant HAP emissions. In the process of mixing, forming, and curing, volatile constituents of these chemicals evaporate to some extent. Many binder system components contain HAP as polymerization reactants, solvents, or catalysts. Although some information on the composition of binder system components is proprietary, much is known about their HAP content. The HAP used in these chemicals and emitted in the mold and core making process include cumene, formaldehyde, methanol, naphthalene, phenol, and xylene. Also, triethylamine is commonly used as a catalyst gas in the cold box process. Most foundries capture and control triethylamine emissions with wet scrubbers that use acid solution as the collection medium. No other organic emissions from mold and core making lines are controlled. Emissions of HAP can also arise in the process of coating the molds and cores. The liquid component of the slurry may contain a HAP such as methanol. Coating emissions are controlled only where the light-off process is used to eliminate flammable constituents.

#### *E. What are the Health Effects Associated With Emissions From Iron and Steel Foundries?*

The metal HAP emitted from melting furnaces includes cadmium, chromium, lead, manganese, and nickel. Aromatic organic HAP produced by mold and core making lines; melting furnaces; and pouring, cooling, and shakeout lines contain acetophenone, benzene, cumene, dibenzofurans, dioxins, naphthalene, phenol, pyrene, toluene, and xylene. The non-aromatic organic HAP emitted are formaldehyde, methanol, and triethylamine. The known health effects of these substances are described in the "EPA Health Effects Notebook for Hazardous Air Pollutants-Draft," EPA-452/D-95-00, PB95-503579 (December 1994), which is available on-line at: <http://www.epa.gov/ttn/uatw/hapindex.html>.

Although numerous HAP may be emitted from iron and steel foundries, only a few account for essentially all of the mass of HAP emissions from these foundries. These HAP are: formaldehyde, methanol, naphthalene, triethylamine, manganese, and lead.

Of the HAP listed above, benzene is a known human carcinogen of moderate carcinogenic hazard. Cadmium, 2,3,7,8-

TCDD (dioxin), formaldehyde, lead, and nickel are classified as probable carcinogens. Chromium can exist in two valence states. Chromium VI is a known human carcinogen of high carcinogenic hazard by inhalation. (*Note:* Chromium III and Chromium VI by oral pathways are classified as Group D "not classifiable as to carcinogenicity in humans.") Acute effects of some of the HAP listed above include irritation to the eyes, nose, and throat, nausea, vomiting, drowsiness, dizziness, central nervous system depression, and unconsciousness. Chronic effects include respiratory effects (such as coughing, asthma, chronic bronchitis, chest wheezing, respiratory distress, altered pulmonary function, and pulmonary lesions), gastrointestinal irritation, liver injury, and muscular effects. Reproductive effects include menstrual disorders, reduced incidence of pregnancy, decreased fertility, impotence, sterility, reduced fetal body weights, growth retardation, slowed postnatal neurobehavioral development, and spontaneous abortions.

The proposed rule would reduce emissions of many of these HAP and would also reduce PM emissions, which are regulated under national ambient air quality standards. Emissions of PM have been associated with aggravation of existing respiratory and cardiovascular disease and increased risk of premature death.

We have no data to assess to what extent iron and steel foundries emissions are causing health effects. We recognize that the degree of adverse effects to health experienced by exposed individuals can range from mild to severe. The extent and degree to which the health effects may be experienced depends on:

- Pollutant-specific characteristics (*e.g.*, toxicity, half-life in the environment, bioaccumulation, and persistence);
- The ambient concentrations observed in the area (*e.g.*, as influenced by emissions rates, meteorological conditions, and terrain);
- The frequency and duration of exposures; and
- Characteristics of exposed individuals (*e.g.*, genetics, age, pre-existing health conditions, and lifestyle), which vary significantly with the population.

## II. Summary of the Proposed Rule

### *A. What Are the Affected Sources?*

The affected sources are each new or existing metal casting department, and each new or existing mold and core making department, at an iron and steel

foundry that is a major source of HAP emissions. A new affected source is one for which construction or reconstruction begins after December 23, 2002. An existing affected source is one for which construction or reconstruction began on or before December 23, 2002. The emissions sources in a metal casting department covered by the proposed rule include metal melting furnaces, scrap preheaters, pouring stations at an existing metal casting department, pouring areas and pouring stations at a new metal casting department, and pouring, cooling, and shakeout lines. The emissions sources in a mold and core making department covered by the proposed rule include each mold and core making and mold and core coating line.

#### *B. What Are the Proposed Emissions Limitations?*

The proposed rule includes emissions limits for metal and organic HAP as well as operating limits for capture systems and control devices. Particulate matter, CO, and volatile organic compounds (VOC) serve as surrogate measures of HAP emissions. Today's proposed rule includes the following emissions standards:

- Each melting furnace and scrap preheater at an existing metal casting department must control emissions of PM to 0.005 grains per dry standard cubic foot (gr/dscf), and each melting furnace and scrap preheater at a new metal casting department must control emissions of PM to 0.001 gr/dscf.
- Each cupola at a new or existing metal casting department must control CO emissions to 200 parts per million by volume (ppmv).
- Each scrap preheater at a new or existing metal casting department must achieve a 98 percent reduction, by weight, in VOC emissions or an outlet concentration of no more than 20 ppmv of VOC (as propane).
- Each pouring station at an existing metal casting department must control emissions of PM to 0.010 gr/dscf, and each pouring station or pouring area at a new metal casting department must control emissions of PM to 0.002 gr/dscf.
- Each new metal casting department must achieve a 98 percent reduction, by weight, in VOC emissions or an outlet concentration of no more than 20 ppmv of VOC (as propane). This limit would be a flow-weighted average.
- Each triethylamine cold box mold and core making line at a new or existing mold and core making department must control triethylamine emissions to 1 ppmv.

The owner or operator of an affected source would be required to install a capture and collection system for each emissions source subject to an emissions limit. The capture and collection system would be required to maintain a 200 foot per minute (fpm) face velocity when all access doors (if present) are in the open position. In addition, for each capture and collection system installed on an affected source, the owner and operator would be required to establish operating limits for capture systems parameter (or parameters) appropriate for assessing capture system performance. At minimum, the limits must indicate the level of the ventilation draft and damper position settings. The proposed rule would require the owner or operator to operate each capture system at or above the lowest value or settings established in the operation and maintenance (O&M) plan. Proposed operating limits for control devices are:

- If a baghouse is applied to PM emissions from a metal melting furnace, scrap preheater, or shakeout station, the alarm on the bag leak detection system must not sound for more than 5 percent of the total operating time in a semiannual reporting period.
- If a wet scrubber is applied to PM emissions from a pouring station, the 3-hour average pressure drop and scrubber water flowrate must remain at or above the minimum levels established during the initial performance test.
- If a wet acid scrubber is applied to triethylamine emissions from a cold box mold and core making line, the 3-hour average scrubbing liquid flowrate must remain at or above the minimum level established during the initial performance test, and the 3-hour average pH of the scrubber blowdown must remain at or below the maximum level so established. If a combustion device is applied to triethylamine emissions from a cold box mold and core making line, the 3-hour average combustion zone temperature must remain at or above the minimum level established during the initial performance test.

The proposed operating limits would not apply to a combustion device applied to organic HAP emissions from a cupola, scrap preheater, or pouring, cooling, and shakeout line because continuous emissions monitoring systems (CEMS) would be required to directly measure CO and VOC emissions.

#### *C. What Are the Proposed Work Practice Standards?*

To reduce HAP emissions from metal casting departments, facilities would be required to develop and operate according to written specifications and procedures for the selection and inspection of the scrap iron or steel that limit the amount of organics and HAP metals in the scrap used as furnace charge. For a pouring, cooling, and shakeout line in an existing metal casting department and a pouring area in a new or existing metal casting department, foundries would be required to manually ignite gases from mold vents that do not automatically ignite.

Four work practice standards are proposed for coating and binder chemical formulations used at new or existing mold and core making departments:

- All mold and core making lines would be required to use non-HAP coating formulations.
- All furan warm box mold and core making lines would be required to use methanol-free binder chemical formulations.
- All phenolic urethane cold box or phenolic urethane nobake mold and core making lines would be required to use naphthalene-depleted solvents. Depletion of naphthalene can not be accomplished by substituting other HAP for the naphthalene.
- All other types of mold and core making lines (not furan warm box, phenolic urethane cold box, or phenolic urethane nobake) would be required to use reduced-HAP binder formulations unless it is technically and/or economically infeasible. Foundries would conduct an initial study to evaluate and identify alternatives. A foundry that does not adopt reduced-HAP binder formulations must repeat the study and submit a report every 5 years to demonstrate that all applicable alternatives remain technically or economically infeasible.

#### *D. What Are the Proposed Operation and Maintenance Requirements?*

The proposed rule would ensure good O&M of control equipment by requiring all foundries to prepare and follow a written O&M plan for capture systems and control devices. The O&M plan must include capture system operating limits, requirements for capture system inspections and repairs, procedures and schedules for preventative maintenance of control devices, and corrective action steps to be taken in the event of a bag leak detection system alarm. The proposed rule also includes



requirements for a startup, shutdown, and malfunction plan similar to those required for other MACT rules. See § 63.6(e)(3) of the NESHAP General Provisions (40 CFR part 63, subpart A) for more information on these requirements.

*E. What Are the Proposed Requirements for Demonstrating Initial and Continuous Compliance?*

**Emissions Limitations**

The proposed rule includes requirements for foundries to conduct performance tests for all emissions sources subject to an emissions limit to show they meet the applicable limit. The proposal would require foundries to measure the concentration of PM using EPA Methods 1 through 4, and either Method 5, 5B, 5D, 5F, or 5I, as applicable, in 40 CFR part 60, appendix A. The proposed rule would require foundries to use Method 18 in 40 CFR part 60, appendix A, to determine the concentration of triethylamine. The proposed rule would also require foundries using CO or VOC CEMS to demonstrate compliance by conducting CEMS performance evaluations and measuring emissions for 3 consecutive operating hours. The proposed rule also includes procedures for establishing operating limits for capture systems and control devices, and revising the limits, if necessary or desired, after the initial performance test.

To demonstrate continuous compliance, the proposed rule would require a CO CEMS for cupolas, a VOC CEMS for scrap preheaters, and a VOC CEMS for pouring, cooling, and shakeout lines at a new metal casting department. The proposed rule would require performance tests every 5 years to demonstrate continuous compliance with the emissions limits. The proposed rule would require emissions sources not equipped with a CEMS to conduct repeat performance tests every 5 years. Monitoring of capture system and control device operating parameters would demonstrate continuous compliance with the operating limits between emissions tests. These proposed monitoring requirements include bag leak detection systems for baghouses and continuous parameter monitoring systems (CPMS) for capture systems (unless damper positions are fixed), wet scrubbers, combustion devices, and wet acid scrubbers. Technical specifications, along with requirements for installation, operation, and maintenance of these monitoring systems, are included in the proposed rule. Records would be required to document any bag leak detection system

alarms and to show conformance with inspection and maintenance requirements for baghouses, CPMS, and CEMS.

**Work Practice Standards**

No performance test would be required to demonstrate initial compliance with the work practice standards. Foundries would certify in their notification of compliance status that they have installed any required capture systems, submitted the required written plans, and that they will meet each of the applicable work practice requirements in the plan or rule as proposed.

Records for visual inspections of all incoming shipments are required to show continuous compliance with the work practice standards for scrap selection and inspection plans. Daily visual inspections are required to show continuous compliance with the work practice standard for mold vent ignition. A record must be kept of each inspection. To demonstrate continuous compliance with the work practice standards for coatings and binder chemicals, foundries would keep records of the chemical composition of the formulations. A new compliance certification would be required each time they change the formulation.

*F. What Are the Proposed Notification, Recordkeeping, and Reporting Requirements?*

These requirements rely on the NESHAP General Provisions in 40 CFR part 63, subpart A. Table 1 to subpart EEEEE (the proposed rule) shows each of the requirements in the General Provisions (§§ 63.2 through 63.15) and whether they apply.

The major notifications include one-time notifications of applicability (due within 120 days of promulgation), performance tests (due at least 60 days before each test), performance evaluations, and compliance status. The notification of compliance status is required within 60 days of the compliance demonstration if a performance test is required or within 30 days if no performance test is required.

Foundries would be required to maintain records that are needed to document compliance, such as performance test results; copies of the startup, shutdown, and malfunction plan; O&M plan; scrap selection and inspection plan, and associated corrective action records; monitoring data; and inspection records. In most cases, records must be kept for 5 years, with records for the most recent 2 years kept onsite. However, the O&M plan;

scrap selection and inspection plan; and startup, shutdown, and malfunction plan would be kept onsite and available for inspection for the life of the affected source (or until the affected source is no longer subject to the proposed rule requirements.)

All foundries would make semiannual compliance reports of any deviation from an emissions limitation (including an operating limit), work practice standard, or O&M requirement. If no deviation occurred and no monitoring systems were out of control, only a summary report would be required. More detailed information is required in the report if a deviation did occur. An immediate report would be required if actions taken during a startup, shutdown, or malfunction were not consistent with the startup, shutdown, and malfunction plan.

*G. What Are the Proposed Compliance Deadlines?*

Foundries with existing affected sources would be required to comply within 3 years of publication of the final rule. New or reconstructed sources that start up on or before the promulgation date for the final rule would have to comply by the promulgation date. New or reconstructed sources that start up after the promulgation date must comply upon initial startup.

**III. Rationale for Selecting the Proposed Standards**

*A. How Did We Select the Affected Sources?*

Affected source means the collection of equipment, activities, or both within a single contiguous area and under common control that is included in the source category or subcategory to which the emissions limitations, work practice standards, and other regulatory requirements apply. The affected source may be the entire collection of equipment and processes in the source category or it may be a subset of equipment and processes. For each rule, we must decide which individual pieces of equipment and processes warrant separate standards in the context of the CAA section 112 requirements and the industry operating practices.

We considered three different approaches for designating the affected source: the entire iron and steel foundry, groups of emissions points, and individual emissions points. We did not designate the entire foundry as the affected source because this broad approach would require us to establish a facilitywide MACT floor based on the total HAP emissions indicative of best-performing foundries. Applying a single

MACT floor to groups of process and fugitive emissions points would be impracticable given the diversity of processes used at individual foundries, especially considering the variety of mold and core making processes used.

One significant group of emissions points in an iron and steel foundry is the metal casting department, which includes emissions from metal melting furnaces (cupolas, electric induction furnaces, scrap preheaters, and electric arc furnaces) and pouring, cooling, and shakeout lines (where molten metal is poured into molds, molds are cooled, and castings are separated from molds). Although some variation exists in these operations at different foundries, these variations do not significantly alter the nature or amount of the HAP emissions from the individual emissions sources, the types of HAP emitted, or the control technology typically used to reduce HAP emissions. We, therefore, concluded that identifying the group of major processes in the metal casting department at an iron and steel foundry as an affected source is appropriate.

The other significant group of emissions points at iron and steel foundries is associated with mold and core making operations. The primary source of HAP emissions from these processes is HAP constituents in binder and coating chemicals. All major source foundries make extensive use of chemical systems to bind the mold and core sand, and certain types of binder systems have much higher volatile HAP content than other systems, so that the amounts of HAP and the specific HAP constituents emitted from mold and core making operations vary substantially between foundries processing the same amount of sand and having similar metal production rates. The use and formulations of mold and core coatings also varies significantly between foundries. Because of the extreme variation in potential to produce HAP emissions, it is necessary to consider mold and core making and coating operations separately from other foundry processes in determining emissions standards. This subset of equipment and processes is termed the mold and core making department.

In selecting the affected sources for regulation, we identified the HAP-emitting operations, the HAP emitted, and the quantity of HAP emissions from the individual or groups of emissions points. The proposed rule includes emissions limits or standards for the control of emissions from melting furnaces and pouring, cooling, and shakeout lines at metal casting departments, and mold and core making lines at mold and core making

departments. Selection of these units as the emissions sources represents the most effective means for EPA to regulate emissions from this source category and addresses all of the principal emissions points from units in this source category.

#### *B. What Other Emissions Sources Did We Consider?*

As described in the background information document, there are numerous other ancillary emissions sources that may contain trace quantities of HAP. The emissions sources that would be regulated under this proposed rule generally contribute over 99 percent of a foundry's HAP emissions. Coatings applied to the cast parts may also significantly contribute to a foundry's total HAP emissions. The HAP emissions from these emissions sources will be regulated under the proposed NESHAP for Coating of Miscellaneous Metal Parts and Products (67 FR 52779).

Sand handling systems are used to recover sand from the shakeout system, avoid buildup at facility work stations, and to reuse sand for making new molds. This sand may include trace organic chemicals such as pyrolysis products formed during pouring and cooling that condensed on the cooler sand at the outer circumference of the mold. Due to the large diameter of the PM emissions generated during sand handling and the fact that these sources are located inside facility buildings, we do not expect that these emissions are released from the foundry building or property line as ambient emissions. Therefore, we have not proposed standards regulating sand handling systems.

Mechanical finishing operations, such as cut-off, grinding, and shot blasting, also produce PM emissions. These PM emissions may contain significant concentrations of metal HAP. However, as with sand handling systems, we do not expect that the large diameter particles generated during these operations are released as ambient emissions. Therefore, we have not proposed standards regulating mechanical finishing operations.

Metal treatment is generally used to achieve the final chemistry needed in the cast part. It is also used to produce ductile iron by adding magnesium to the molten iron (commonly referred to as inoculation). Metal treatment generally occurs in holding furnaces or transfer ladles, but may occur in an electric induction furnace or electric arc furnace. The emissions from metal treatment operations consist primarily of magnesium, but may include trace

amounts of metal HAP. It is unclear to what extent these emissions may be released from the building, but emissions estimates from the available data suggest that these emissions do not contribute appreciably to the emissions from the foundry. As such, we believe regulating metal treatment would not achieve any measurable reduction in metal HAP emissions. Therefore, we have not proposed standards regulating metal treatment at this time.

Holding furnaces are often used to store the molten metal until it is needed by the foundry's pouring stations. These furnaces are almost completely enclosed and, consequently, they are not a source of ambient HAP emissions from foundries. Again, no measurable reduction in metal HAP emissions can be achieved by regulating holding furnaces. Therefore, we have not proposed emissions standards regulating holding furnaces.

In addition to the operations listed above, we have not proposed emissions standards regulating metal HAP emissions from cooling lines and shakeout stations. Although these are significant sources of organic HAP emissions, they do not contribute to ambient emissions of metal HAP from iron and steel foundries. Cooling lines do not generate PM emissions and the molten metal is not exposed to the atmosphere where metal fumes might be released. Shakeout stations are a significant source of PM emissions, however, these emissions are almost entirely comprised of sand. As with sand handling systems, the PM (sand) emissions may include trace organic chemicals such as pyrolysis products formed during pouring and cooling that condensed on the cooler sand at the outer circumference of the mold. It may also include small chunks of metal. However, due to the large diameter of the PM emissions generated during shakeout, we do not expect that these emissions are released as ambient emissions from the foundry. Therefore, we are not proposing standards for metal HAP from cooling lines and shakeout stations.

We are specifically considering whether to adopt a fugitive emissions standard in the form of a shop opacity limitation or a roof vent emissions limitation. Such a requirement would provide additional assurance that any fugitive emissions sources within the physical strictures at iron and steel foundries would not contribute significantly to ambient emissions from such facilities. Such a standard might include an opacity limit of 5 percent or a no visible emissions limit for all foundry building releases (roof vents,

doors, or other openings) that are not otherwise covered by a specific emissions limit. If we were to establish such a requirement, we would establish the level for the limit by evaluating existing state and permit limits and any available emissions information consistent with the procedures described later in this document that was used to establish MACT for other emissions sources at iron and steel foundries.

However, we have not proposed an opacity or visible emissions limit because our emissions estimates indicated that the emissions sources for which we have not proposed standards are unlikely to contribute to ambient HAP emissions from the iron and steel foundries. Thus, while we do not have conclusive data regarding the potential for fugitive emissions to contribute to ambient HAP emissions from foundries, it appears that the inclusion of an opacity or visible emissions limit for the foundry building might not function to control HAP emissions from the foundry.

We specifically request comment on the regulatory options that we are considering for control of potential fugitive emissions from these miscellaneous sources. We request additional data on the potential for the miscellaneous sources discussed above to contribute to ambient HAP emissions from iron and steel foundries, including comments and supporting data that either demonstrates the need to regulate one or several of these currently unregulated emissions sources or that supports our position that these emissions sources do not release HAP to the atmosphere in quantities sufficient to require additional regulation. We also request comment on the appropriateness of the possible levels for the fugitive emissions limits discussed above, and the methodology for calculating such limits for this source category.

#### *C. How Did We Select the Pollutants?*

There are three types of melting furnaces used at major source iron and steel foundries: Cupolas, electric induction furnaces, and electric arc furnaces. All three furnace types emit PM that is known to contain HAP metals, predominately manganese and lead. We, therefore, decided to establish standards for metal HAP emissions. Source tests on cupolas have shown the presence of small amounts of organic HAP including acetophenone, polychlorinated dibenzofurans, polychlorinated dibenzo-p-dioxins, and pyrene. We concluded that establishing standards for these HAP is appropriate. We selected PM as a surrogate for metal

HAP emissions from melting furnaces and CO as a surrogate for organic HAP emissions from cupolas.

Pouring molten metal into sand molds produces emissions from the incomplete combustion of the organic chemicals used in chemically bonded molds and cores and also from sea coal and other organic constituents of green sand. These products of incomplete combustion are known to contain benzene, formaldehyde, and toluene. In addition, small amounts of HAP metals are emitted during pouring. We selected PM as a surrogate for metal HAP emissions from pouring and VOC as a surrogate for organic HAP emissions from pouring, cooling, and shakeout lines.

In the process of mixing sand and binder chemicals, forming the sand into molds and cores, and curing the resulting shapes, volatile constituents of the binder chemicals evaporate to some extent. The HAP emitted in the mold and core making process include cumene, formaldehyde, methanol, naphthalene, phenol, triethylamine, and xylene. Emissions vary widely between different types and formulations of chemical systems; however, for each system the HAP species emitted can be identified. We, therefore, decided to establish standards to control the emissions of these HAP.

The source of HAP emissions from the mold and core coating operation is the liquid component of the slurry, which may contain a HAP such as methanol. Alternative liquid formulations that contain no HAP are available. We conclude that substitution of coating material formulations is possible, and that it is feasible to establish emissions standards in this proposal based on pollution prevention that address liquid HAP used in coating operations.

#### *D. How Did We Determine the Basis and Level of the Proposed Standards for Emissions Sources in the Metal Casting Department?*

##### *Scrap Selection*

There is the potential for HAP emissions to occur during all phases of metal casting (including melting, pouring, cooling, and shakeout) due to impurities (such as lead, paint, oil and grease) that may be present in the scrap metal. By reducing, to the extent possible, the amounts of these impurities in the scrap metal, foundries can achieve HAP emissions reductions throughout the metal casting department.

In 1998, we conducted a detailed and comprehensive survey of known foundries in the U.S. From this survey,

EPA compiled the data from the 595 iron and steel foundries that provided survey responses. Among other things, this survey requested information on work practices, such as scrap selection and/or cleaning, at foundries that reduced air emissions. Of the 595 iron and steel foundries that provided survey responses, 360 (or 60 percent) of iron and steel foundries indicated that they used some type of scrap selection, cleaning, or inspection program to ensure the quality of scrap metal used by the foundry.

The percentage of foundries that specify scrap selection as a work practice to reduce emissions are relatively consistent for foundries operating different furnace types: 45 percent of cupola foundries, 61 percent of electric arc furnace foundries, and 65 percent of electric induction furnace foundries. These percentages indicate that scrap selection or cleaning measures are utilized by a sufficient number of foundries to represent the MACT floor control regardless of the melting furnace. Furthermore, several foundries operate two different types of melting furnaces and these foundries typically specify the same scrap selection for each furnace. Electric induction furnaces have scrap preparation procedures targeted at reducing the amount of water (moisture) in the scrap being changed. These procedures are included for safety concerns specific to electric induction furnace operation and do not necessarily reduce the amount of HAP in the scrap or the HAP emissions from the metal casting department. These procedures account for the slightly higher percentage of electric induction furnaces that report general scrap selection measures.

The EPA evaluated survey responses to determine the number of foundries that have specific scrap specifications that limit either HAP contaminants (e.g., lead) or contaminants that are precursors to HAP emissions (e.g., oil or paint). Many of the responses were general in nature, such as "use clean scrap," "follow scrap specification," or "inspect scrap." However, 71 foundries (12 percent) specified in their survey responses that their scrap selection procedures included limits or restrictions on the amount of organic material in the scrap metal. These organic material restrictions were most commonly expressed as limits or bans on oil, grease, and/or paint in the scrap. Occasionally, restrictions included reference to coolants or rubber components (belts, hoses) in the scrap. In addition, 55 foundries (7.5 percent) specified in their survey responses that

their scrap selection procedures included limits or restrictions on the amount of tramp metals in the scrap. These scrap selection metal restrictions were most commonly limits (or bans) on lead, but often included restrictions on the use of galvanized metals (a source of cadmium) and certain alloys (a source of chromium, nickel, or high manganese).

Through information collected through site visits and additional queries of large foundries that are anticipated to be major sources of HAP emissions, we have determined that scrap selection and inspection is an integral part of foundry operations needed to ensure the quality (chemistry) of the cast parts. Although some of the foundries visited or queried did not have a written scrap selection plan and did not indicate scrap selection as a work practice used to reduce air emissions, these foundries generally purchased specific grades of scrap and typically included specifications on the scrap (such as "no oil" and/or "no lead") on their purchase requisitions. Furthermore, these foundries routinely inspected incoming scrap shipments and rejected scrap shipments that did not meet their quality requirements.

It is difficult to establish specific emissions reductions achieved by these scrap selection and inspection programs. First, nearly all foundries implement some sort of formal or informal scrap selection and inspection program (to maintain product quality) so it is difficult to assess what the baseline emissions might be without the scrap selection and inspection program. Second, these scrap selection and inspection programs are used in conjunction with other air emissions control technologies used to reduce emissions from the melting furnace and pouring, cooling, and shakeout line exhaust vent streams. The emissions reductions specifically attributable to the scrap selection and inspection program are impossible to separate out. Nonetheless, it is clear that any reduction in HAP content or HAP precursors entering the metal casting department will tend to reduce the emissions of HAP metals and organics from the metal casting department's emissions sources.

While a scrap selection and inspection program is expected to reduce HAP emissions, they cannot be expected to eliminate all HAP elements or precursors in the scrap. First, scrap loads are generally large (at least at major source iron and steel foundries) and difficult to inspect. A load of scrap may contain thousands of different pieces, and some scrap may be shredded and bundled. Visual inspections are

only able to identify obvious off-specification materials that are on the top of a load. Second, some of the HAP elements are desirable components in the scrap iron and steel which contribute to the overall chemistry of the product and provide valuable properties in the cast metal (e.g., manganese and chromium.) Third, even undesirable HAP metals cannot be eliminated from the cast iron and steel as they are trace components in the scrap iron and steel which cannot be separated. For example, all cast iron contains trace amounts of lead (typically 0.5 to 4 percent). As such, a load of scrap meeting a "no lead" scrap specification does not mean that the scrap is lead-free—only that the scrap is free of lead components (e.g., batteries or wheel weights).

As a scrap selection and inspection program can be reasonably expected to reduce HAP emissions from the metal casting department and since over 6 percent (the median of the top 12 percent) of the foundries employ a scrap selection and inspection program that limits the amount of organic impurities (HAP precursors) and HAP metals in their scrap, we have determined that the MACT floor for existing sources is the work practice of scrap selection and inspection to limit the amount of organic impurities and HAP metals in the scrap used by the metal casting department of the foundry.

Considering the practical limitations discussed above, we believe that scrap specifications with specific numeric limits on HAP concentrations cannot be established. A visual inspection program cannot distinguish the trace lead content of the scrap iron and steel parts contained in a load of scrap. The ultimate chemistry of a load of scrap cannot be accurately assessed until after the metal is melted (which is too late to reduce HAP emissions). Additionally, we cannot establish that one scrap selection and inspection program that limits or restricts both organic impurities and HAP metals in the scrap provides higher emissions reductions than an alternative scrap selection and inspection program that limits or restricts both organic impurities and HAP metals. Therefore, the MACT floor for new sources is the same as the MACT floor for existing sources, which is the work practice of a scrap selection and inspection program that specifically addresses methods for reducing the amount of organic impurities and HAP metals in the scrap used by the metal casting department of the foundry.

We could identify no other practical pollution prevention method to reduce HAP emissions from the metal casting

department based on alternative scrap specifications. Therefore, no emissions reduction options beyond the MACT floor were considered for the scrap selection and inspection program.

In summary, we are proposing a pollution prevention work practice standard as a component of MACT for both new and existing foundries to limit both organic and metal HAP emissions throughout the metal casting department. This standard would require facilities to develop and operate according to written specifications and procedures for the selection and inspection of the scrap iron that would limit the amount of organic impurities and HAP metals in the scrap used by the metal casting department of the foundry.

The scrap selection and inspection requirements being proposed are intended to ensure that facilities make a reasonable effort to limit the amount of organic impurities and HAP metals in the scrap they process and are based on our understanding of what the best performing facilities are currently doing. A few examples of the types of specifications that we believe are appropriate include bans on lead components (*i.e.*, lead batteries, lead pipe, and lead fittings), and that oils and other liquids be drained. We do not believe that limits on chromium or manganese content are appropriate because these elements are required in the cast iron and steel parts. We specifically request comment on the feasibility of implementing the proposed scrap selection and inspection requirements and whether or not the proposed requirements accurately reflect the practices at the best performing facilities.

#### Cupolas

A cupola is a vertical cylindrical shaft furnace used to melt iron and steel scrap through combustion of the coke in a forced upward flow of heated air. Virtually all emissions from a cupola are contained in the flow of air exiting the stack of the furnace, which contains organic compounds, CO and PM. The organic compounds, which arise from incomplete combustion of coke and impurities such as oil and grease in the furnace charge, include traces of organic HAP such as acetophenone and pyrene. The PM contains HAP metals such as lead and manganese that are impurities in the scrap. The organic compounds and CO are destroyed by combustion, which may occur spontaneously but is typically initiated by an afterburner located downstream from the charge. The PM are typically controlled by

either a fabric filter (baghouse) or a wet scrubber.

Cupolas are used to produce molten iron. Because the coke used to fuel the cupola increases the carbon content of the molten metal, cupolas cannot be used to produce molten steel (which requires less than 1 percent carbon content). Unlike other melting furnaces, cupolas produce a continuous supply of molten metal, and they typically have much higher melting capacities than other furnace types.

A substantial body of information is available on the types, configurations, and operating conditions of the pollution control devices applied across the iron and steel foundry source category. This information was collected through our comprehensive survey of known iron and steel foundries conducted in 1998. From this survey, detailed data are available for 595 iron and steel foundries which provided survey responses. This survey indicates that 143 cupolas are operated in the U.S.

*MACT for organic HAP emissions.* The primary method for reducing organic HAP emissions from cupolas is an afterburner, which is used on 104 of the 143 existing cupolas. Afterburners are installed primarily to combust CO, a byproduct of the furnace operation, but also act to incinerate any organic compounds present. A typical cupola exhaust will contain CO at levels of 10 percent or higher.

The afterburner itself is a relatively simple device consisting of a cylindrical refractory-lined chamber equipped with burners for ignition and sufficiently sized to provide appropriate residence time to achieve complete combustion. Cupola afterburners are typically operated at an ignition temperature of 1,300 °F or higher to combust the CO in the cupola exhaust stream. This temperature is the minimum temperature need to oxidize CO to carbon dioxide. Given that thermal destruction of most organic compounds occurs at 1,200 °F or below,<sup>1</sup> we believe that organic HAP are effectively controlled by an afterburner that effectively oxidizes CO.

To confirm the effectiveness of an afterburner applied to an iron and steel foundry cupola, we conducted source tests on two cupolas, one equipped with an afterburner followed by a baghouse, and another equipped with an afterburner followed by a venturi scrubber. Three sampling runs were made in one test and four in the other. Test methods used were EPA Method

23, Determination of Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofurans (PCDD/PCDF) From Stationary Sources, and SW-846 Methods 0010 (sampling) and 8270 (analysis), which are applicable to the determination of semivolatile principal organic hazardous compounds from incineration systems.

Results of the Method 23 tests showed that measured amounts of PCDD/PCDF were very low and highly variable. In six of the seven runs, concentrations of at least some of the fractions or species analyzed were below the quantitative limits. Within this limitation, total PCDD/PCDF adjusted for the 2,3,7,8-TCDD Toxic Equivalency Factors (TEF) were 1.8 to 5.5 nanograms per dry standard cubic meter (ng/dscm) at 7 percent oxygen in one test, 0.17 to 0.85 ng/dscm in the other. The constituent that was consistently measured in the highest quantifiable levels adjusted by the TEF was the pentachlorinated dibenzofuran fraction, which varied from 1.0 to 3.0 ng/dscm in one test, and 0.07 to 0.40 ng/dscm in the other.

Results of SW-846 Methods 0010/8270 also showed very low and highly variable concentrations. Of the 70 compounds analyzed, only 20 were detected in the first test, 25 in the second. Only acetophenone in the first test and acetophenone and pyrene in the second test were detected at levels above the quantitative limits in all runs. The maximum concentration of acetophenone varied from less than 1 to less than 2 parts per billion by volume (ppbv). The maximum concentration of pyrene measured was 0.070 ppbv. The maximum mass emissions rates for both tests were 0.0011 and 0.00013 pounds per hour for acetophenone and pyrene, respectively. These emissions test data suggest that organic HAP emissions from well-controlled cupolas are at or below the detection limits of current EPA methods. It is clear from the data that afterburners are effective in reducing organic HAP emissions.

In selecting the MACT floor for organic HAP control from cupolas, we considered the feasibility of an emissions limit for one or more HAP organic compounds. The two tests that we conducted, as discussed above, are the only organic HAP emissions data available from cupolas. We believe the test data are too limited to determine the variability and achievability of an emissions limit for individual organic HAP compounds.

We believe CO is an appropriate surrogate for organic HAP emissions from cupolas. As discussed previously, the combustion conditions required to oxidize CO generally exceed the

conditions necessary to combust organic HAP compounds. As such, effective control of CO will ensure effective control of organic HAP emissions. However, evaluation of organic HAP emissions from similar exhaust streams in other source categories indicate that reduction of the CO concentration below a few hundred ppmv does not necessarily correlate to additional organic HAP emissions reductions. This is because organic HAP destruction occurs more readily than CO oxidation and because emissions of certain organic HAP such as formaldehyde tend to increase when a combustion device is used to reduce CO concentration. This phenomena is believed to be caused by additional natural gas consumption needed to achieve these very low CO concentrations in the exhaust stream. For these reasons, we believe that CO is a good surrogate for organic HAP at concentrations above several hundred ppmv. However, available data suggest that organic HAP emissions do not continue to decrease when CO concentrations fall below a few hundred ppmv.

We have CO emissions data from 17 cupolas. We also examined State requirements for cupolas as they relate to organic HAP emissions limitations. Illinois, Indiana, Michigan, Ohio and Wisconsin are all States that contain a large number of iron and steel foundries. Each of these States have standards that relate to cupola emissions which require the use of an afterburner. The Illinois standard requires that gases are burned in a direct flame afterburner so that the resulting concentration of CO in such gases is less than or equal to 200 ppmv corrected to 50 percent excess air for cupolas with melting rates of greater than five tons per hour. The Ohio and Wisconsin standards both require afterburning at 1,300 °F for 0.3 seconds or greater. The Michigan standard requires cupolas with melting rates of 20 or more tons per hour be equipped with an afterburner control system, or equivalent, which reduces the CO emissions from the ferrous cupola by 90 percent. The Indiana standard simply requires cupolas with melting rates of 10 or more tons per hour be burned in a direct-flame afterburner or boiler. These standards clearly indicate that afterburning is the preferred control measure for organic HAP from cupolas.

These State standards are intended to control CO emissions from cupolas either by limiting outlet CO concentration, requiring a minimum CO destruction efficiency, or establishing incinerator operating conditions targeted to achieve CO destruction. Of

<sup>1</sup> Air Pollution Engineering Manual, Ed. by A.J. Buonicore and W.T. Davis. Van Nostrand Reinhold, New York, 1992. Page 59.

these State standards, we believe the 200 ppmv limit is the most stringent (*i.e.*, requires the greatest CO destruction efficiency) and, therefore, the most effective in organic HAP emissions reductions. And as stated above, further reductions in CO concentration are not expected to result in further organic HAP emissions reductions.

We determined the MACT floor for new and existing cupola furnaces by ranking the furnaces for which we have emissions information based on the estimated emissions limitation achieved for that furnace. We have emissions information from the comprehensive survey of known iron and steel foundries for 143 cupolas. Two types of emissions information was used to determine the MACT floor—source test data, and engineering design parameters including afterburner control efficiency and outlet CO concentration design values.

Where we had CO emissions source test data for a furnace, we used the emissions data to estimate the emissions limitation achieved for that furnace. We have credible emissions source test data for 13 cupola afterburners controlling 17 cupolas. Each test is comprised of at least three EPA Method 10 sampling runs of approximately 1 hour in duration.

While we believe each emissions source test gives a good indication of the level of control achieved by the control device during the time of the emissions test, we do not believe a single emissions source test can be used as an estimate of the long term emissions limitation achieved for that source due to normal variations in process and control device performance and other factors, such as the inherent imprecision of sampling and analysis, which cannot be controlled. We believe that the MACT floor performance level must be achievable under the most adverse circumstances which can reasonably be expected to recur. As such, the MACT floor performance limit must include a consideration for the variability inherent in the process operations and the control device performance. Therefore, we used a statistical method to estimate the emissions limitation achieved by a furnace when emissions source test data were available. For each furnace where emissions source test data were available, the emissions limitation achieved for that furnace was estimated at the 95th percentile outlet CO concentration using a one-sided z-statistic test (*i.e.*, the emissions limitation which the furnace is estimated to be able to achieve 95 percent of the time). We evaluated

several options to estimate the standard deviation that is needed to perform the z-statistic test. We decided not to estimate the standard deviation for each furnace based on the available emissions data for just that furnace since most furnaces only have three data points to use in estimating the standard deviation, one data point for each run in a three run emissions source test. Instead, we calculated a relative standard deviation (RSD) for each test and then averaged the RSD to provide our best estimate of the variability of the test data. We estimated an average RSD of 0.5 based on a pooling of all of the available emissions source test data. We believe this method adequately accounts for the normal variability in emissions source test data and provides a reasonable estimate of the long term emissions limitation achieved by a furnace.

When emissions source test data were not available for a furnace, we estimated the emissions limitation achieved by that furnace based on other emissions information including afterburner control efficiency and outlet CO concentration design values. These data were used to estimate the emission reduction limitation achieved for the remaining 126 cupolas where we did not have stack test emissions data.

Additional information on the ranking of the furnaces used to determine the MACT floor, including the data used, details of the statistical analysis performed, and the estimated emissions limitation achieved for each furnace, is available in the docket for the proposed rule.

We have interpreted the MACT floor for existing sources (*i.e.*, the average emissions limitation achieved by the best performing 12 percent of existing sources) to be the performance achieved by the median source of the top 12 percent best performing sources, which would be the 6th percentile unit. As we have emissions information on 143 cupola sources, the 6th percentile would be the 9th best performing unit ( $143 \times 0.06 = 8.6$ ). Based on our ranking of the emissions limitation achieved by the existing cupola afterburners, we determined that the MACT floor for organic HAP control at existing sources is a CO emissions concentration of 200 ppmv. Based on available emissions test data, we believe that existing sources can achieve an emissions limitation of 200 ppmv using a well-designed and operated afterburner to control emissions.

For new sources, the MACT floor is the emissions control that is achieved in practice by the best-controlled similar source. Based on our ranking, the best-

controlled similar source has achieved a CO emissions limitation of 200 ppmv. However, evaluation of organic HAP emissions from similar exhaust streams in other source categories indicate that reduction of the CO concentration below a few hundred ppmv does not necessarily correlate to additional organic HAP emissions reductions. This is because organic HAP destruction occurs more readily than CO oxidation, and because emissions of certain organic HAP such as formaldehyde tend to increase due to the significant increase in natural gas consumption, which results in formaldehyde emissions, needed to achieve these very low CO concentrations in the exhaust stream. We believe a CO concentration of 200 ppmv is a good indicator of proper destruction of organic HAP. However, we do not believe that further reduction in CO concentrations will result in additional organic HAP emissions reduction beyond that achieved by an afterburner operated to meet a 200 ppmv CO concentration limit. Therefore, we established the MACT floor for organic HAP emissions from new sources as a CO emissions limit of 200 ppmv.

Next, we evaluated regulatory options that were more stringent than the MACT floor (beyond-the-floor) options. We could not identify any technically feasible options that can reduce organic HAP emissions below the level of the new source MACT floor of 200 ppmv. Therefore, the proposed MACT standards are based on the MACT floor performance limits for new and existing sources. For existing and new sources, the MACT standard for organic HAP emissions is a CO emissions limit of 200 ppmv.

*MACT for HAP metal emissions.* Metal HAP emissions from cupolas are controlled by baghouses, venturi scrubbers, and electrostatic precipitators (ESP). Based on industry survey data available for 143 cupolas in the iron and steel foundries source category, there are 58 cupolas (40 percent) controlled by baghouses, 76 (53 percent) controlled by venturi scrubbers, 1 (1 percent) controlled by an ESP, and 9 (6 percent) that are uncontrolled for metal HAP.

We have very limited metal HAP emissions data. Specifically, the only data on metal HAP emissions from cupolas include two source tests we conducted on two cupolas: one controlled by a baghouse, and the other controlled by a venturi scrubber. The two source tests demonstrate that a baghouse achieves lower HAP metal emissions than a venturi scrubber. Concentrations of lead and manganese, the two HAP metals found to be present

in the highest concentrations, were substantially lower in the baghouse exhaust gas than in the wet scrubber exhaust gas. The average lead concentration measured was 42 micrograms per cubic meter ( $\mu\text{g}/\text{dscm}$ ) from the baghouse, and 240  $\mu\text{g}/\text{dscm}$  from the scrubber. The average manganese concentration was 21  $\mu\text{g}/\text{dscm}$  from the baghouse, and 1,570  $\mu\text{g}/\text{dscm}$  from the scrubber. While these data are useful in demonstrating that baghouses do achieve greater control of metal HAP emissions than venturi scrubbers, they are inadequate for the purpose of establishing a specific emissions standard (or standards) for metal HAP.

We also have emissions data for PM from source tests conducted on 36 cupolas: 12 controlled by baghouses, 23 controlled by venturi scrubbers, and 1 controlled by an ESP. For metal HAP compounds, we believe PM to be a reasonable surrogate. The metal compounds of concern are in fact a component of the PM contained in the cupola exhaust. As a result, effective control of cupola PM emissions will also result in effective control of HAP metals. Because emissions data for PM are available, and because PM can reasonably serve as a surrogate for metal HAP from cupolas, we elected to establish PM limits to control metal HAP emissions from cupolas.

We also looked at existing State PM emissions limitations and discovered that they are much more lenient than actual emissions.<sup>2</sup> Therefore, we believe that PM emissions limitations that are specified in air regulations and facility operating permits applicable to iron and steel foundries cannot function as a reasonable proxy for actual emissions and, as such, are not appropriate for establishing the MACT floor for metal HAP or for PM as a surrogate of metal HAP.

We determined the MACT floor for new and existing cupola furnaces by ranking the furnaces for which we have emissions information based on the estimated emissions limitation achieved for that furnace. We have emissions information from the comprehensive survey of known iron and steel foundries for 143 cupolas. Two types of emissions information was used to determine the MACT floor—source test

data, and engineering design parameters including control type and outlet PM concentration design values.

Where we had emissions source test data for a furnace, we used the emissions data to estimate the emissions limitation achieved for that furnace. We have credible emissions source test data for 36 cupolas including 12 controlled by baghouses, 23 controlled by venturi scrubbers, and 1 controlled by an ESP. Each test is comprised of at least three EPA Method 5 sampling runs of approximately 1 hour in duration. We were careful to include only the data representing the Method 5 PM (*i.e.*, “front half” PM catch), as some foundries reported both front and back half PM catches.

While we believe each emissions source test gives a good indication of the level of control achieved by the control device during the time of the emissions test, we do not believe a single emissions source test can be used as an estimate of the long term emissions limitation achieved for that source due to normal variations in process and control device performance and other factors, such as the inherent imprecision of sampling and analysis, which cannot be controlled. We believe that the MACT floor performance level must be achievable “under the most adverse circumstances which can reasonably be expected to recur.” As such, the MACT floor performance limit must include a consideration for the variability inherent in the process operations and the control device performance.

Therefore, we used a statistical method to estimate the emissions limitation achieved by a furnace when emissions source test data were available. For each furnace where emissions source test data were available, the emissions limitation achieved for that furnace was estimated at the 95th percentile outlet PM concentration using a one-sided z-statistic test (*i.e.*, the emissions limitation which the furnace is estimated to be able to achieve 95 percent of the time.) We evaluated several options to estimate the standard deviation that is needed to perform the z-statistic test. We decided not to estimate the standard deviation for each furnace based on the available emissions data for just that furnace since most furnaces only have three data points to use in estimating the standard deviation, one data point for each run in a three run emissions source test. We also decided not to estimate the standard deviation for a furnace based on just the data available for that furnace type because we have very limited information on electric arc

furnaces, and because the standard deviation estimates the three types of furnaces were very similar. An analysis of variance was performed on the data and there was no statistically significant difference in the standard deviation estimates for the three furnace types. Ultimately, we estimated an average RSD of 0.4 based on a pooling of all of the available emissions source test data for all furnaces types controlled by baghouses. Note that data on venturi scrubbers and ESP were not used in estimating the RSD because the available emissions source test data clearly demonstrated that the furnaces controlled with these devices were not among the best performing 12 percent of sources. We believe this method adequately accounts for the normal variability in emissions source test data and provides a reasonable estimate of the long term emissions limitation achieved by a furnace. Additional information on the statistical analysis used to estimate the emissions limitation achieved by a furnace, including the data used and the complete ranking of furnaces, is available in the docket for the proposed rule.

When emissions source test data were not available, we estimated the emissions limitation achieved by that furnace based on other emissions information including control type and outlet PM concentration design values. These data were used to estimate the emission reduction limitation achieved for the remaining 107 cupolas where we did not have stack test emissions data.

Additional information on the ranking of the furnaces used to determine the MACT floor, including the data used, details of the statistical analysis performed, and the estimated emissions limitation achieved for each furnace, is available in the docket for the proposed rule.

We have interpreted the MACT floor for existing sources (*i.e.*, the average emissions limitation achieved by the best performing 12 percent of existing sources) to be the performance achieved by the median source of the top 12 percent best performing sources, which would be the 6th percentile unit. It is reasonable to use the median to represent the emissions reductions achieved by the top performing units because the median represents the emissions reductions achieved by an actual facility and, therefore, is representative of the what can be achieved with the emissions controls used at that facility. As we have emissions information on 143 cupola sources, the 6th percentile would be the 9th best performing units ( $143 \times 0.06 =$

<sup>2</sup> For example, Indiana, Michigan, and Wisconsin are States containing a large number of iron and steel foundries. These states have PM concentration limits for cupolas of 0.08  $\text{gr}/\text{dscf}$  or higher. By contrast, exhaust gas emissions from 27 of the 34 cupolas for which we have data show measured PM concentrations of 0.07  $\text{gr}/\text{dscf}$  or lower. Also, the average PM concentrations from all 12 of the cupolas with baghouses were 0.005  $\text{gr}/\text{dscf}$  or lower.

8.6). Based on our ranking of the emissions limitation achieved by the existing cupola furnaces, we determined that the MACT floor for metal HAP control at existing sources is a PM emissions concentration of 0.005 gr/dscf. Based on available emissions test data, we believe that existing sources can achieve an emissions limitation of 0.005 gr/dscf using a well-designed and operated baghouse to control emissions.

For new sources, the MACT floor is the emissions control that is achieved in practice by the best-controlled similar source. Based on our ranking, the best-controlled similar source achieves an emissions limitation of 0.001 gr/dscf. Two cupolas were identified that have achieved average outlet PM concentrations of 0.001 gr/dscf. Both of these cupola systems employ a novel pulse-jet baghouse with horizontally supported bags (referred to as a horizontal baghouse) that exhibited significantly better performance, based on available emissions source test data, than any of the traditionally-designed (vertically hanging bag) baghouses. In addition, one of the two facilities was designed with a vendor guaranteed performance level of 0.001 gr/dscf, and five emissions source tests have been conducted on this baghouse demonstrating that it is able to achieve a PM concentration of 0.001 gr/dscf. Therefore, the MACT floor for metal HAP control at new sources is determined to be an average PM concentration of 0.001 gr/dscf or less.

Next, we evaluated regulatory options that were more stringent than the MACT floor (beyond-the-floor) options. We could not identify any technically feasible options that can reduce metal HAP emissions below the level of the new source MACT floor of 0.001 gr/dscf. For existing sources, we evaluated the option of requiring existing sources to meet the new source MACT floor of 0.001 gr/dscf. Based on the available emissions source test data, it is likely that existing sources would have to install and operate a horizontal baghouse in order to achieve an emissions limit of 0.001 gr/dscf. Since only two furnaces are currently equipped with horizontal baghouses, the rest of the existing sources would have to remove any existing controls (including traditional baghouses) and replace them with horizontal baghouses. We estimated the incremental annualized cost of requiring all existing sources to meet a 0.001 gr/dscf standard over the MACT floor level of 0.005 gr/dscf at \$6.3 million dollars per year. We estimated the additional HAP emissions reduction that would be achieved at 13 tpy. Therefore, the additional cost per

ton of additional HAP removed is \$480,000 per ton of HAP emissions reduced for the beyond-the-floor alternative. We rejected the beyond-the-floor control option because of its high incremental costs per ton of HAP removed.

The proposed MACT standards are based on the MACT floor performance limits for new and existing sources. For existing sources, the MACT standard for cupolas is an average PM concentration of 0.005 gr/dscf or less. For new sources, the proposed MACT standard for cupolas is an average PM concentration of 0.001 gr/dscf or less.

#### Electric Induction Furnaces and Scrap Preheaters

An electric induction furnace is a vessel in which forms of iron and steel, such as scrap and foundry returns, are melted through resistance heating by an electric current. The current is induced in the metal charge by passing an alternating current through a coil that surrounds either the charge (the coreless electric induction furnace) or a pool of molten metal at the bottom of the vessel (the channel electric induction furnace). An electric induction furnace operates in batch mode, an operating cycle consisting of charging, melting, backcharging (adding a second load of charge after the first load has melted, which is optional), and tapping.

One major characteristic of melting operations using an electric induction furnace is that scrap feed for an electric induction furnace is commonly preheated prior to charging to the furnace. When used, preheating is almost universally effected by direct exposure of the scrap metal to a gas flame. Scrap preheaters are used primarily to eliminate volatile substances, including water, that may vaporize suddenly and cause an explosion if added to a molten charge or heel in the furnace. Scrap preheaters are also used because the cost of initial scrap heating with a gas flame (up to approximately 800 °F) is less costly than heating with electricity. Scrap preheaters are used solely for direct exposure of the scrap metal to a gas flame. Scrap preheaters are considered to be an integral part of the electric induction furnace metal melting operation, and they generally share a common PM control device with the electric induction furnace. Therefore, we have included scrap preheaters in the evaluation of electric induction furnace control requirements.

Another significant characteristic of electric induction furnaces is that they typically have low melting rates and are generally used at smaller iron and steel

foundries. From the comprehensive survey of iron and steel foundries, there are 1,394 electric induction furnaces at the 595 iron and steel foundries that provided survey responses. Although there are almost ten times more electric induction furnaces than cupolas, the total amount of metal melted nationwide using electric induction furnaces is only about 65 percent of the metal melted in cupolas. The median size electric induction furnace has a melting capacity of 1 ton/hr, and 95 percent of all electric induction furnaces at iron and steel foundries have melting capacities under 10 tons/hr. Predominately, electric induction furnaces are used at small foundries or for small-production specialty-metal castings (e.g., high alloy iron castings) at larger foundries. Emissions from electric induction furnaces are generally low and primarily consist of PM and metal fumes.

#### MACT for organic HAP emissions.

Electric induction furnaces are not considered to be a significant source of organic HAP emissions, primarily due to safety concerns with adding volatile substances to the furnace. To avoid explosion hazards, tramp materials such as oil and grease that are commonly present in scrap are removed either by the use of a scrap preheater, by cleaning and drying the scrap on-site, or are eliminated by purchasing only pre-cleaned or ingot scrap. As such, organic HAP emissions from electric induction furnaces are negligible and establishing a limit would not result in measurable emissions reductions. Therefore, we are not proposing an emissions limit regulating organic HAP emissions from electric induction furnaces.

Scrap preheaters are a potential source of organic HAP due to the volatilization and incomplete combustion of oil and grease that may be present in the scrap. Direct flame heating is used for most of the 177 scrap preheaters operated at iron and steel foundries. This method is anticipated to effect a reduction in organic HAP by combusting most of the organic materials that may be present in the scrap. A second method of control is afterburning of exhaust gases, which is used for 12 scrap preheaters at two foundries. Six of the scrap preheaters for which afterburning is used are at one foundry that preheats scrap in vessels that are so large that the flame may not penetrate the entire charge, thus allowing some organic tramp materials to be volatilized and escape without being combusted.

We do not have actual organic HAP emissions data; neither do we have data on emissions that can function as a



surrogate for organic HAP. Therefore, we cannot use scrap preheater emissions data to directly calculate an emissions limit for organic HAP from scrap preheaters. We do have significant data on the methods currently used at scrap preheaters that reduce organic HAP emissions and well-established information on the performance and effectiveness of these methods, and we can use these data to estimate the level of control that these operations currently achieve.

Afterburning is used at 12 (6.8 percent) of the 177 scrap preheaters, and these scrap preheaters are located at three iron and steel foundries (6 scrap preheaters at each of 2 foundries). As these afterburners are used in conjunction with direct flame preheaters, it is reasonable to conclude that these systems achieve the greatest organic HAP emissions reductions compared to scrap preheaters operated without any additional control systems. Because more than 6 percent (*i.e.*, greater than the median of the top 12 percent) of the scrap preheaters are equipped with afterburners, the MACT floor is represented by the performance achieved by scrap preheater afterburners.

Without additional data to characterize the organic HAP removal performance of scrap preheater afterburners, we relied on our extensive experience with, and knowledge of, the capabilities of thermal incinerators at destroying organic emissions. Because afterburners are thermal incinerators, it is reasonable to conclude that the performance of scrap preheater afterburners is comparable to the performance of thermal incinerators generally. We have over 20 years of experience in evaluating the performance of thermal incinerators on a variety of organic emissions sources. Based on our experience, we have identified a well-established presumption that a well-designed and operated thermal incinerator or afterburner is capable of achieving a 98 percent reduction or an outlet concentration of 20 ppmv of VOC. There is no reason to believe that there is anything about the thermal incinerators used in conjunction with scrap preheaters that would result in any poorer or more efficient HAP reduction performance.

We believe that VOC is a reasonable surrogate for organic HAP emissions from scrap preheaters because organic HAP emissions are a significant component of the VOC emissions. Furthermore, effective control of VOC emissions will result in effective control of organic HAP emissions. Unlike the

emissions from cupolas, which are high in CO content due to the incomplete combustion of coke, CO is not a good surrogate for organic HAP emissions from scrap preheaters. Scrap preheater emissions are already low in CO content because the preheaters use natural gas as fuel and operate with excess oxygen. Therefore, we selected VOC as the surrogate for organic HAP emissions from scrap preheaters.

We have determined that afterburners represent the MACT floor control for scrap preheaters. We believe that the performance of these scrap preheater afterburners is comparable to the performance of thermal incinerators on other organic emissions sources, and that VOC is a reasonable surrogate for organic HAP emissions from scrap preheaters. Accordingly, we have established the existing source MACT floor for organic HAP emissions from scrap preheaters as a 98 percent reduction or an outlet concentration of 20 ppmv of VOC.

We do not know of any control option that would result in lower organic HAP emissions than can be achieved by afterburning. As such, the MACT floor for new sources is the same as the MACT floor for existing sources. Therefore, the proposed MACT standard for both existing and new scrap preheaters is a VOC reduction of 98 percent or greater, or an outlet concentration of 20 ppmv if a 98 percent reduction would result in an outlet concentration below 20 ppmv. Because we do not have emissions data from scrap preheaters that directly or indirectly measure organic HAP, we specifically request comment on the proposed performance limits for organic HAP emissions from scrap preheaters.

We believe this emissions limit is appropriate and achievable by scrap preheaters equipped with afterburners. Because the direct flame used by some scrap preheaters can itself function as a thermal incinerator, we believe that most scrap preheaters units that employ direct flame preheating will be able to meet this limit without the application of afterburners.

*MACT for metal HAP emissions.* Both electric induction furnaces and scrap preheaters are sources of metal HAP. As discussed earlier, reduction of metal HAP emissions is accomplished by PM control since the metal HAP of concern are primarily contained in the particulate emissions. Baghouses, along with a few cartridge filters, are the devices most commonly used for PM controls on the 1,394 electric induction furnaces operated at iron and steel foundries. Baghouses and cartridge filters (or fabric filters) are used for

controlling melting operations for 388 electric induction furnaces (28 percent), wet scrubbers are used for 21 electric induction furnaces (1.5 percent), and cyclones are used for 2 electric induction furnaces (0.1 percent). Electric induction furnaces also have the potential to emit PM during charging and tapping operations. These operations are generally controlled by the same control device used to control melting operation emissions. As such, fabric filters also dominate the charging and tapping emissions controls. Charging is controlled by fabric filters for 358 electric induction furnaces (26 percent) and tapping is controlled by fabric filters for 309 electric induction furnaces (22 percent). Over 70 percent of electric induction furnaces (961) do not use PM controls for any phase of operation.

Of the 177 scrap preheaters used at iron and steel foundries, 64 have baghouse controls for the discharging phase of operation; 23 of the 64 use the same controls for heating, and 25 of the 64 use the same controls for loading. Other controls used for PM are cyclones (used for 11 scrap preheaters) and wet scrubbers (two scrap preheaters). Approximately half of the scrap preheaters do not use controls for any phase of operation. Of the 64 scrap preheaters that are controlled by baghouses, 59 are employed in conjunction with electric induction furnaces that are also equipped with baghouses. Of those 59 scrap preheaters, 43 are controlled by the same baghouses as their associated electric induction furnace. We are proposing a single MACT limit for both electric induction furnaces and scrap preheaters because PM emissions from scrap preheaters are typically controlled with the same control device used to control the PM emissions from their associated electric induction furnace.

Data for actual emissions of HAP metals are available from only one electric induction furnace. These data are insufficient to characterize HAP emissions from iron and steel foundries. However, as we explained earlier, we believe PM to be a reasonable surrogate for HAP metal compounds for electric induction furnaces and scrap preheater/electric induction furnace systems. The metal HAP compounds of concern are in fact a component of the PM contained in the scrap preheater and electric induction furnace exhaust. As a result, effective control of PM emissions will also result in effective control of HAP metals. Outlet PM concentration data are available for 19 fabric filters (17 baghouses and 2 cartridge filters) used to control emissions from 57 electric

induction furnaces and 16 scrap preheaters, 1 venturi scrubber on 2 electric induction furnaces, 1 cyclone on 2 electric induction furnaces, and 7 uncontrolled electric induction furnaces. Based on the relative availability of PM versus HAP metal emissions data and based on the nature of the metal HAP emissions (being particulate in nature), we elected to use PM as a surrogate for metal HAP emissions in establishing the MACT floor.

We also looked at Federally-enforceable emissions limitations as a possible surrogate for actual electric induction furnace and scrap preheater HAP emissions data. However, the State limitations are much more lenient than actual emissions and cannot serve as a proxy for the level of performance that such units actually achieve.<sup>3</sup>

We determined the MACT floor for new and existing electric induction furnaces and scrap preheaters by ranking the furnaces for which we have emissions information based on the estimated emissions limitation achieved for that furnace. We have emissions information from the comprehensive survey of known iron and steel foundries for 1,394 electric induction furnaces and scrap preheater/electric induction furnace systems. Two types of emissions information was used to determine the MACT floor—source test data, and engineering design parameters including control type and outlet PM concentration design values.

As with cupola furnaces, where we had emissions source test data for a furnace, we used the emissions data to estimate the emissions limitation achieved for that furnace. We have credible emissions source test data for 57 electric induction furnaces controlled by 19 fabric filters (17 baghouses and 2 cartridge filters), 2 electric induction furnaces controlled by venturi scrubbers, 2 electric induction furnaces controlled by cyclones, and 7 uncontrolled electric induction furnaces. Each test is comprised of at least three EPA Method 5 runs (except two tests at one foundry that employed EPA Method 17) with sampling runs of approximately 1 hour in duration. As discussed earlier, the MACT floor performance limit must include a consideration for the variability inherent in the process operations and the control device

performance. Therefore, we used a statistical method to estimate the emissions limitation achieved by a furnace when emissions source test data were available. For each furnace where emissions source test data were available, the emissions limitation achieved for that furnace was estimated at the upper 95th percentile outlet PM concentration using a one-sided z-statistic test (*i.e.*, the emissions limitation which the furnace is estimated to be able to achieve 95 percent of the time.) We believe this method adequately accounts for the normal variability in emissions source test data and provides a reasonable estimate of the emissions limitation achieved by a furnace. Additional information on the statistical analysis used to estimate the emissions limitation achieved by a furnace, including the data used and the complete ranking of furnaces, is available in the docket for the proposed rule.

When emissions source test data were not available, we estimated the emissions limitation achieved by that furnace based on other emissions information from the detailed survey including control type, outlet PM concentration design values, and design PM removal efficiencies. These data were used to estimate the emission reduction limitation achieved for the remaining 1,337 electric induction furnaces and scrap preheaters where we did not have stack test emissions data.

Additional information on the ranking of the sources used to determine the MACT floor, including the data used, details of the statistical analysis performed, and the estimated emissions limitation achieved for each furnace, is available in the docket for the proposed rule.

We have interpreted the MACT floor for existing sources (*i.e.*, the average emissions limitation achieved by the best performing 12 percent of existing sources) to be the performance achieved by the median source of the top 12 percent best performing sources, which would be the 6th percentile unit. Again, it is reasonable to use the median to represent the emissions reductions achieved by the top performing units because the median represents the emissions reductions achieved by an actual facility and, therefore, is representative of the what can be achieved with the emissions controls used at that facility. As there is emissions information on 1,394 electric induction furnaces and scrap preheater/electric induction furnace sources, the 6th percentile would be represented by the 84th best performing units (1,394 ×

0.06 = 83.6). Based on our ranking of the emissions limitation achieved by the existing electric induction furnaces and scrap preheaters/electric induction furnaces, we determined that the MACT floor for metal HAP control at existing sources is a PM emissions concentration of 0.005 gr/dscf. We believe that existing sources can achieve an emissions limitation of 0.005 gr/dscf using a well-designed and operated baghouse to control emissions.

For new sources, the MACT floor is the emissions control that is achieved in practice by the best-controlled similar source. Based on our ranking, the best-controlled similar source achieves an emissions limitation of 0.001 gr/dscf. This source actually employs a three stage control system: a baghouse (positive pressure, shaker, polyester, air-to-cloth ratio of 3 ft/min), followed by a set of cartridge filters, followed by high efficiency particulate arrester (HEPA) filters. There are also several traditional baghouse units that are achieving this performance level, and these units span the range of potential electric induction furnaces and scrap preheater control configurations. Furthermore, as discussed earlier, we believe baghouse technologies exist that can effectively meet this performance level, and we believe this baghouse technology can be applied to electric induction furnace and scrap preheater emissions sources. Based on the available information, the MACT floor performance level for new electric induction furnaces and scrap preheaters emissions sources is determined to be an average PM concentration of 0.001 gr/dscf or less.

Next we evaluated regulatory options that were more stringent than the MACT floor (beyond-the-floor) options. We could not identify any technically feasible options that can reduce metal HAP emissions below the level of the new source MACT floor of 0.001 gr/dscf. For existing sources, we evaluated the option of requiring existing sources to meet a more stringent limit, including the new source MACT floor of 0.001 gr/dscf. However, we believe that a more stringent limit is not justified for existing electric induction furnace and scrap preheater emissions sources because many units that could currently meet the existing source MACT floor would need to purchase new baghouse control systems and remove and dispose of their existing baghouses. The incremental cost per ton of HAP removed for a 0.001 gr/dscf emissions limit for existing electric induction furnace and scrap preheater sources is roughly \$400,000 to \$500,000 per ton of HAP metal reduced.

<sup>3</sup> Wisconsin, Indiana, Ohio, Illinois, and Alabama have PM emissions limits that apply to melting furnace and general foundry operations. In these States, PM emissions limits are 0.05 gr/dscf or higher. In contrast, measured PM concentration in electric induction furnace baghouse offgases are generally less than 0.005 gr/dscf.

Therefore, the proposed MACT standards for electric induction furnaces and scrap preheaters are based on the MACT floor performance limits for new and existing sources. For existing sources, the MACT standard for electric induction furnaces and scrap preheaters is an average PM concentration of 0.005 gr/dscf. For new sources, the MACT standard for electric induction furnaces and scrap preheaters is an average PM concentration of 0.001 gr/dscf.

#### Electric Arc Furnaces

An electric arc furnace is a vessel in which forms of iron and steel such as scrap and foundry returns are melted through resistance heating by an electric current. The current flows through the arcs formed between electrodes (that are slowly lowered into the furnace) and the surface of the metal and also through the metal between the arc paths. Like an electric induction furnace, an electric arc furnace operates in batch mode; an operating cycle consists of charging the furnace, melting the charge, backcharging (which is optional), and tapping the molten metal.

Electric arc furnaces are primarily used in the steel foundry industry with limited applications at iron foundries. Based on the information collected through our comprehensive survey of iron foundries, 81 iron and steel foundries (out of 595 respondents) reported using electric arc furnaces for their melting operations. These 83 iron and steel foundries operate a total of 163 melting electric arc furnaces.

*MACT for organic HAP emissions.* We have no organic HAP specific emissions data for electric arc furnaces. However, electric arc furnaces are not anticipated to be a significant organic HAP emissions source. Total hydrocarbon concentrations measured in the exhaust stream show very low organic concentrations (less than 1 ppmv). Small amounts of organic HAP emissions may arise from electric arc furnaces due to the vaporization or partial combustion of contaminant oils and greases that may be present in the scrap. Implementation of a scrap selection and inspection program that limits the amount of organic impurities in the scrap used, which has previously been determined to be a part of the MACT floor for the metal casting department of the foundry, should minimize the potential for organic emissions from the electric arc furnace. Furthermore, it is likely that most trace organic materials present in the scrap after scrap selection and inspection will be pyrolyzed in the electric arc furnace due to the heat associated with the melting operation. Thus, we believe that

organic HAP emissions from electric arc furnaces are negligible, and that the performance of these units with respect to organic HAP can not be measurably improved.

Moreover, no iron and steel foundry operates an emissions control system that would further reduce the organic HAP emissions, if any exist, from the electric arc furnace exhaust stream. Because no units currently reduce organic HAP emissions from electric arc furnaces in the iron and steel foundry industry, the MACT floor for organic HAP from electric arc furnaces (for both new and existing sources) would be no reduction in emissions. Because the organic concentrations are already so low, no technically feasible control technologies can be identified that could reduce the organic emissions from electric arc furnaces. Therefore, aside from the scrap selection and inspection requirements, no organic HAP emissions standards are proposed for electric arc furnaces.

*MACT for metal HAP emissions.* The PM emissions from electric arc furnaces contain metal HAP such as lead and manganese that are trace components in the scrap metal. The metal HAP emissions are reduced primarily by PM control. Baghouses, the only means used for controlling PM emissions for electric arc furnaces, are employed for 81 charging/ backcharging, 160 melting, and 62 tapping operations (of the 163 electric arc furnaces operated at iron and steel foundries).

The MACT floor cannot be determined from actual emissions of HAP because no HAP emissions data are available. However, as stated earlier, we believe PM to be a reasonable surrogate for HAP metal compounds. Effective control of PM emissions will also result in effective control of HAP metals.

We also looked at State limits or permit conditions as a possible surrogate for actual electric arc furnace emissions data. However, the State limits and permit conditions are much more lenient than actual emissions.<sup>4</sup>

We determined the MACT floor for new and existing electric arc furnaces by ranking the furnaces for which we have emissions information based on the estimated emissions limitation achieved for that furnace. We have emissions information from the comprehensive survey of known iron and steel foundries for 163 electric arc

furnaces. Two types of emissions information was used to determine the MACT floor—source test data, and engineering design parameters including control type and outlet PM concentration design values.

As with the other furnace types, where we had emissions source test data for a furnace, we used the emissions data to estimate the emissions limitation achieved for that furnace. Outlet PM concentration data are available for ten baghouses that are used to control the emissions from 23 electric arc furnaces operated by iron and steel foundries. As discussed earlier, the MACT floor performance limit must include a consideration for the variability inherent in the process operations and the control device performance. Therefore, we used a statistical method to estimate the emissions limitation achieved by a furnace when emissions source test data were available. For each furnace where emissions source test data were available, the emissions limitation achieved for that furnace was estimated at the upper 95th percentile outlet PM concentration using a one-sided z-statistic test (*i.e.*, the emissions limitation which the furnace is estimated to be able to achieve 95 percent of the time.) As stated earlier, we believe this method adequately accounts for the normal variability in emissions source test data and provides a reasonable estimate of the emissions limitation achieved by a furnace.

When emissions source test data were not available, we estimated the emissions limitation achieved by that furnace based on other emissions information obtained from the detailed survey including control type, outlet PM concentration design values, and design PM removal efficiencies. These data were used to estimate the emission reduction limitation achieved for the remaining 140 electric arc furnaces where we did not have stack test emissions data.

Additional information on the ranking of the sources used to determine the MACT floor, including the data used, details of the statistical analysis performed, and the estimated emissions limitation achieved for each furnace, is available in the docket for the proposed rule.

We have interpreted the MACT floor for existing sources (*i.e.*, the average emissions limitation achieved by the best performing 12 percent of existing sources) to be the performance achieved by the median source of the top 12 percent best performing sources, which would be the 6th percentile unit. Again, it is reasonable to use the median to represent the emissions reductions

<sup>4</sup> Wisconsin, Indiana, Ohio, Illinois, and Alabama have PM emissions limits that apply to melting furnace and general foundry operations. Exhaust gas concentration limits are 0.05 gr/dscf or higher. In contrast, measured PM concentration in electric arc furnace baghouse offgases are generally less than 0.005 gr/dscf.

achieved by the top performing units because the median represents the emissions reductions achieved by an actual facility and, therefore, is representative of the what can be achieved with the emissions controls used at that facility. As there is emissions information on 163 EAF sources, the 6th percentile would be represented by the 10th best performing unit ( $163 \times 0.06 = 10$ ). Based on our ranking of the emissions limitation achieved by the existing electric arc furnaces, we determined that the MACT floor for metal HAP control at existing electric arc furnace sources is a PM emissions concentration of 0.005 gr/dscf. We believe that existing sources can achieve a PM emissions limitation of 0.005 gr/dscf using a well-designed and operated baghouse to control emissions.

For new sources, the MACT floor is the emissions control that is achieved in practice by the best-controlled similar source. Based on our ranking, the best-controlled electric arc furnace achieves an emissions limitation of 0.001 gr/dscf. Unlike the top performing cupola or electric induction furnace control system, there does not appear to be a technological reason why this baghouse has superior performance. This baghouse is a negative-pressure shaker-type baghouse serving one furnace. One other baghouse (a positive-pressure shaker-type baghouse serving two furnaces) also appears to meet this performance limit. Positive-pressure baghouses are notoriously difficult to test and there are potential concerns about dilution air, which is often used to maintain optimal baghouse operating temperatures. However, the source test on this baghouse appears to have been rigorously performed using EPA Method 5D. The baghouse has seven compartments and seven exhaust stacks. Each exhaust stack was traversed, with 12 traverse points per stack, for each of the three runs. Thus, 96 traverse points were sampled for each run. With this many traverse points, a relatively large gas sample volume was collected, affording quantifiable PM catches even at the low concentrations observed. A second source test was performed on this unit and it again achieved an average outlet concentration 0.001 gr/dscf or less.

In addition, we believe that other available technology (*i.e.*, a horizontal baghouse as discussed in the cupola section) also can consistently meet an emissions limitation of 0.001 gr/dscf, and that this technology can also be applied for the control of electric arc furnace emissions. Based on the available information, the MACT floor

performance level for new electric arc furnaces is determined to be an average PM concentration of 0.001 gr/dscf or less.

It is possible that there may be process differences that account for the low emissions achieved by some electric arc furnaces that may be grounds for further sub-categorization. We request comments and solicit supporting data on whether there are process related differences that would justify further sub-categorization of electric arc furnaces. All comments and data received will be considered in forming the final rule requirements.

Next, we evaluated regulatory options that were more stringent than the MACT floor (beyond the floor) options. We could not identify any technically feasible options that can reduce metal HAP emissions below the level of the new source MACT floor of 0.001 gr/dscf. For existing sources, we evaluated the option of requiring existing sources to meet a more stringent limit, including new source MACT floor of 0.001 gr/dscf. However, we believe that a more stringent limit is not justified for existing electric arc furnace emissions sources because many units that could currently meet the existing source MACT floor would need to purchase new baghouse control systems and remove and dispose of their existing baghouses. The incremental cost per ton of HAP removed for a 0.001 gr/dscf emissions limit for existing electric arc furnace sources is roughly \$400,000 to \$500,000 per ton of HAP metal reduced.

In summary, the metal HAP MACT standard for electric arc furnaces at existing sources is an average PM concentration of 0.005 gr/dscf or less. For new sources, the MACT standard for electric arc furnaces is an average PM concentration of 0.001 gr/dscf or less. These proposed MACT standards are based on the MACT floor performance limits for new and existing sources.

#### *Pouring Areas and Pouring, Cooling, and Shakeout Lines*

As described earlier in this preamble, after the iron and steel is melted, the molten metal is poured into molds that contain open cavities in the shape of the part being cast. The majority of molds are made of sand that contain prescribed amounts of clay and moisture (green sand) or chemical additives that help the sand retain the desired shape of the cast part. Molds may also be made of tempered metal (iron or steel) that are filled by gravity (permanent molds) or by centrifugal force (centrifugal casting). Some systems use polystyrene or other low density plastic (foam) patterns and pack sand around the patterns. This

type of casting operation is referred to as expendable pattern casting or the lost foam process since the plastic pattern is volatilized (and/or pyrolyzed) by the molten metal as the castings are poured; expendable pattern casting is generally used for complex, close-tolerance castings.

There are two basic configurations for pouring, cooling and shakeout. The most common configuration is automated or pallet lines that transfer the mold to and from a fixed location (the "pouring station") where the molten metal is poured into molds. The molds are then transported to a conveyor or separate cooling area where the molds are allowed to cool until the cast part has sufficiently hardened so that it can be removed from the mold. The cast parts are removed from the molds at the shakeout station, which is typically a vibrating grate or conveyor that breaks apart the sand molds. This configuration is referred to as pouring, cooling, and shakeout lines.

The second configuration employs stationary molds (such as pit or floor molding), and the molten metal is transported to and from the molds using portable pouring ladles. The metal is poured and the molds are then allowed to cool in-place (*i.e.*, in the "pouring area"). The molds may then be transported to a separate shakeout area or more commonly shakeout may be performed in the pouring area. Shakeout for these stationary molds is generally accomplished manually (with sledge hammers) or using back hoes or similar devices to break apart the molds and retrieve the cast part.

Based on the differences in the operation of these systems, we elected to subcategorize pouring, cooling, and shakeout operations into two subcategories—pouring, cooling, and shakeout lines; and pouring areas. Pouring, cooling, and shakeout lines use pouring stations and the molds are transported to and from the pouring station. Cooling and shakeout then occurs in a separate area within the facility. These pouring, cooling, and shakeout lines are often automated systems and are typically used for cast parts the size of automotive engine blocks or smaller. Pouring areas have molds that remain stationary during pouring and cooling (and typically shakeout). Pouring areas are commonly used to make large cast parts (*e.g.*, construction equipment) where it is difficult to move the molds after pouring due to the size of the molds employed. Based on the industry survey data, iron and steel foundries operate 1,317 pouring, cooling, and shakeout lines (*e.g.*, automated or pallet lines that

have fixed pouring stations) and 435 pouring areas (e.g., floor or pit molds).

*MACT for organic HAP emissions.*

Organic HAP are emitted from pouring areas and pouring, cooling, and shakeout lines when chemicals in sand molds and cores are vaporized or pyrolyzed by the heat of the molten metal. The most common control for organic HAP is ignition of mold offgas. Ignition typically occurs spontaneously in automated pouring, cooling, and shakeout lines, while manual ignition of mold vents is standard practice for floor and pit molding (i.e., pouring areas). After several minutes (roughly 5 to 10 minutes depending on the size of the mold and castings), the rate of gaseous release from the molds eventually subsides to the point that a flame cannot be supported by the mold vents. At this point, the flame goes out but the molds can continue to smolder and emit organic HAP as they continue to cool. Ignition of mold vents is believed to effectively reduce organic emissions immediately after pouring when the release of organic vapor from the molds is the highest.

In addition to mold vent ignition, three foundries operate control systems that further reduce organic HAP emissions from the pouring, cooling, and shakeout lines. One iron and steel foundry is equipped with a thermal oxidizer operated on one of its two pouring and cooling lines (the thermal oxidizer is not used to control emissions from this pouring and cooling line's shakeout station). Operators of the foundry installed the thermal oxidizer to meet State permit limits on the VOC emissions from this line. Two iron and steel foundries operate carbon adsorption systems for their pouring, cooling, and shakeout lines. At one foundry, the carbon adsorption system is reported to control pouring, cooling and shakeout operations for the one pouring, cooling, and shakeout line at the foundry. At the second foundry, the carbon adsorption system is used to control one of two cooling lines and both shakeout stations for the two pouring, cooling, and shakeout lines operated at the foundry. Both of the carbon adsorption systems were designed and installed to reduce odor by 90 percent. No additional organic HAP emissions controls (beyond mold vent ignition) are used for any pouring areas.

In addition to these control measures, some studies are currently investigating pollution prevention measures for reducing pouring, cooling, and shakeout organic HAP emissions by reducing certain additives in green sand or chemical binder formulations. The

limitations to binder formulations proposed as part of the standard for mold and core making lines may also reduce organic HAP emissions from the pouring, cooling, and shakeout lines; however, no numerical limit can be assigned to these pollution prevention techniques. These systems may be used to comply with the proposed standard for new sources, but these pollution prevention techniques are only in the investigation stages and cannot be characterized as proven or commercially available techniques. Consequently, we do not consider such regulatory alternatives available for purposes of establishing emissions limits for these sources.

Only limited data on organic HAP or VOC emissions from pouring, cooling, and shakeout lines are available, and the data that are available are not adequate for establishing an emissions limit based on actual emissions. Therefore, we have determined the MACT floor for organic HAP from pouring, cooling, and shakeout lines and pouring areas based on our assessment of the effectiveness of the controls used on pouring, cooling, and shakeout lines and pouring areas at existing foundries.

*Pouring, cooling, and shakeout lines.*

Most pouring, cooling, and shakeout lines (well over 12 percent) control organic HAP by either spontaneous ignition or manual ignition of offgas from mold vents immediately after pouring. While pouring, cooling, and shakeout lines equipped with a thermal oxidizer or carbon adsorption system achieve greater control of organic HAP emissions than lines using ignition of mold vent offgas alone, very few existing units use these control methods, and they do not constitute part of the MACT floor for existing sources. Thus, ignition of mold vent offgas represents the organic HAP MACT floor control for existing pouring, cooling, and shakeout lines.

We do not believe it is feasible to establish an emissions standard representative of the emissions limitation achieved by ignition of mold vent offgas. We do not have adequate emissions data to characterize the emissions reductions achieved by mold vent ignition. Nor can we identify any information upon which we could reasonably rely on to estimate the performance of mold vent ignition in order to establish an emissions limit. Moreover, since these emissions are not captured or conveyed to a stack, it is not reasonable to establish a numeric emissions limitation. Therefore, we are proposing a work practice requirement to ensure ignition of the offgas from the mold vents immediately after pouring as

the MACT floor for pouring, cooling, and shakeout lines.

For new source MACT on pouring, cooling, and shakeout lines, we examined the pouring, cooling, and shakeout lines that are equipped with a thermal oxidizer or a carbon adsorption system. No data are available to compare the emissions limitation achieved by these pouring, cooling, and shakeout line versus pouring, cooling, and shakeout lines that only use ignition of mold vent offgas. However, since these control systems are used in conjunction with mold vent ignition, and since we know that ignition alone leaves substantial HAP emissions uncontrolled (i.e., after the flame goes out), and we know that these additional technologies typically are efficient at reducing organic HAP, we believe that these systems provide more effective organic HAP emissions reductions than the use of mold vent ignition alone. No HAP or VOC emissions data exist for the carbon adsorption systems, so we are unable to determine which of the two types of control devices (thermal oxidizer or carbon adsorption system) provide the greatest reduction in organic HAP emissions.

The pouring, cooling, and shakeout lines that employ these additional control systems appear to be pouring, cooling, and shakeout lines that have unusually high VOC emissions potential. These foundries employ chemically bonded molds or use significant amounts of chemically bonded cores per ton of metal poured. As such, these foundries are expected to have much higher VOC and organic HAP emissions from their pouring, cooling, and shakeout lines than most foundries.

Data for VOC and HAP emissions were available for ten pouring, cooling, and shakeout lines at two foundries. These foundries operate green sand pouring, cooling, and shakeout lines with chemically-bonded cores (core sand to metal ratio of approximately 0.1 to 1). These pouring, cooling, and shakeout lines exhibited VOC concentrations of 0.4 to 18 ppmv (as propane). Data for the foundry operating a thermal oxidizer indicate VOC concentrations in excess of 100 ppmv.

Data for VOC and HAP emissions are also available for several bench-scale testing operations. Since the actual concentrations measured for these bench-scale units should be similar to full-scale production units, these data indicate the organic HAP emissions comprise roughly 65 percent of the VOC emissions arising from pouring, cooling, and shakeout lines. Thus, we believe that VOC is an appropriate surrogate for

organic HAP emissions from pouring, cooling, and shakeout lines.

At the low organic concentrations found in most pouring, cooling, and shakeout lines, the destruction efficiency of a thermal oxidizer and the removal efficiency of a carbon adsorption system is greatly reduced. Based on the available VOC emissions data and engineering considerations of these control systems, we believe that both of these control systems are essentially equivalent control systems for reducing organic HAP emissions from pouring, cooling, and shakeout lines. The performance of these systems represents the MACT floor control for new pouring, cooling, and shakeout lines.

Without additional data to characterize the organic HAP removal performance of these systems applied to pouring, cooling, and shakeout lines, we relied on our well-established understanding of the capabilities of thermal incinerators at destroying organic emissions. It is reasonable to conclude that the performance of these control systems for pouring, cooling, and shakeout lines is comparable to the performance of well-designed and operated thermal incinerators and carbon adsorption systems generally. We have over 20 years of experience in evaluating the performance of these control systems on a wide variety of organic emissions sources. Based on our experience with these technologies and the related engineering constraints, we have reasonably concluded that well-designed and operated thermal incinerators or carbon adsorption systems are capable of achieving a 98 percent reduction down to an outlet concentration of 20 ppmv of VOC. We have no reason to expect that there is anything about these technologies used in conjunction with pouring, cooling, and shakeout lines that would result in poorer or more effective HAP reduction performance.

As with scrap preheaters, we believe that VOC is a reasonable surrogate for organic HAP emissions from pouring, cooling, and shakeout lines because the organic HAP is a significant component of the VOC emissions. Furthermore, effective control of VOC emissions will result in effective control of organic HAP emissions. Therefore, we selected VOC as the surrogate for organic HAP emissions from pouring, cooling, and shakeout lines. Accordingly, we have established the new source MACT floor for organic HAP emissions from pouring, cooling, and shakeout lines as a 98 percent reduction, or an outlet concentration of 20 ppmv if a 98 percent

reduction would result in an outlet concentration below 20 ppmv.

Next, we evaluated options more stringent than the MACT floor. First we looked for alternatives that are more stringent than the MACT floor for new pouring, cooling, and shakeout lines. However, we do not know of any control option that would result in lower organic HAP emissions than can be achieved by thermal incinerators or carbon adsorption systems. Therefore, the proposed MACT standard for new pouring, cooling, and shakeout lines is a VOC reduction of 98 percent or greater or an outlet VOC concentration of 20 ppmv or less. Because we have very little data about the actual organic HAP performance of these control systems on pouring, cooling, and shakeout lines at iron and steel foundries, we specifically request comment on these performance limits for organic HAP emissions from pouring, cooling, and shakeout lines at new metal casting departments. We believe the new source emissions limit is appropriate and achievable by pouring, cooling, and shakeout lines equipped with thermal incinerators or carbon adsorption systems. It may also be possible for some pouring, cooling, and shakeout lines that use low emitting binder systems or green sand additives to meet this limit using only mold vent ignition.

We also evaluated the option of requiring existing pouring, cooling, and shakeout lines to meet the new source MACT floor of 98 percent reduction or 20 ppmv. The cost per ton of organic HAP removed for this control option will vary for each individual pouring, cooling, and shakeout line. A preliminary analysis was conducted to estimate the control cost for all chemically bonded mold pouring, cooling, and shakeout lines, as these mold lines are the most likely to have VOC emissions of greater than 20 ppmv. Based on this preliminary analysis, the cost of this control option is likely to exceed \$25,000 per ton organic HAP emissions reduced. As such, we elected not to require the more stringent limit because application of these control systems to pouring, cooling, and shakeout lines that have exhaust VOC concentrations greater than 20 ppmv does not appear to be cost effective. Although we did not elect to require more stringent control systems for existing pouring, cooling, and shakeout lines at this time, we intend to further refine the cost estimates for these organic HAP emissions control systems for pouring, cooling, and shakeout lines. If the refined analysis indicates that this control option is more cost effective than currently projected, we may

require existing pouring, cooling, and shakeout lines to achieve a 98 percent VOC emissions reduction or 20 ppmv VOC concentration (as propane). We specifically invite comment on whether or not a more stringent control requirement for existing pouring, cooling, and shakeout lines is appropriate. We also invite the submission of additional information that may be useful in estimating the cost and effectiveness of these control systems as applied to pouring, cooling, and shakeout lines.

Therefore, we are proposing the work practice of ensuring ignition of the offgas from the mold vents immediately after pouring as MACT for pouring, cooling, and shakeout lines at existing metal casting departments. We are also establishing emissions limitations for organic HAP emissions from pouring, cooling, and shakeout lines as a 98 percent reduction or an outlet concentration of 20 ppmv of VOC as new source MACT for metal casting departments.

*Pouring Areas.* Most pouring areas (well over 12 percent) control organic HAP by either spontaneous ignition or manual ignition of offgas from mold vents immediately after pouring. In addition, none of the existing pouring areas are equipped with add-on controls. Thus, ignition of mold vent offgas represents the organic HAP MACT floor control for existing and new pouring lines.

As discussed above for pouring, cooling, and shakeout lines, we do not believe it is feasible to establish an emissions standard representative of the emissions limitation achieved by ignition of mold vent offgas (see discussion above). Therefore, we are proposing a work practice requirement to ensure ignition of the offgas from the mold vents immediately after pouring as the MACT floor for pouring, cooling, and shakeout lines.

We evaluated potential control systems that may be applicable to reduce organic HAP emissions from pouring areas beyond the level of the MACT floor. As discussed above, thermal incinerators and carbon adsorption systems are generally effective organic HAP emissions control devices, but their effectiveness in reducing emissions becomes very limited at low organic HAP concentrations. Due to the requirements to access the molds in the pouring area (e.g., for pouring, mold vent ignition and manual shakeout), any capture system employed for molding areas must be located some appreciable distance from the molds. Also, as the pouring areas are generally large (large

molds or multiple molds in a pouring area), the high ventilation requirements for effective capture of pouring area emissions would necessarily result in very low organic HAP concentrations in the pouring area exhaust stream (likely less than 1 or 2 ppmv). At these low concentrations, the effectiveness of the additional organic HAP emissions controls is very low, and the secondary impacts (energy and other environmental impacts) associated with the capture and control system is significant. As such, we have determined that no effective control system is available to reduce organic HAP emissions from pouring areas beyond the MACT floor control technology (mold vent ignition).

Therefore, we are proposing the work practice of ensuring ignition of the offgas from the mold vents immediately after pouring as MACT for both new and existing pouring areas, based on the MACT floor analysis.

*MACT for metal HAP emissions.* Metal HAP is emitted from pouring stations and pouring areas as metal fumes escape the molten metal as it is poured into the molds. Once the molten metal is contained within the mold, the potential for metal HAP emissions is greatly reduced due to the very small surface area from which metal HAP can be released. The potential for releases is further reduced as the molten metal cools and hardens. As such, cooling and shakeout do not result in appreciable metal HAP emissions releases from the foundry.

We do not believe we can establish an emissions limit for specific HAP metals because emissions data are very limited for pouring stations and pouring areas. Metal HAP emissions data are available for a pouring station at one foundry, but these data are for uncontrolled emissions and cannot be used to assess the performance of the MACT floor control system. Furthermore, when pouring emissions are controlled, they are typically combined with other emissions sources at the foundry (e.g., melting, cooling, or shakeout operations), which further complicates the development of specific HAP emissions limits.

We believe that PM is an appropriate surrogate for HAP metal emissions from pouring emissions. The metal compounds of concern are in fact a component of the PM contained in the exhaust. As a result, effective control of PM emissions will also result in effective control of HAP metals. Because emissions data for PM are available, and because PM can reasonably serve as a surrogate for metal HAP, we elected to establish PM limits to control metal

HAP emissions from pouring stations and pouring areas.

We looked at State limits and permit conditions applied to pouring. The most prevalent type of limit was expressed in lb/hr of PM, and these limits are site specific and vary from plant to plant. A few States, such as Wisconsin and Michigan, have some concentration limits expressed in pounds per 1,000 pounds of exhaust gas (lb/1,000 lb). The limits range from 0.038 to 0.2 lb/1,000 lb, which is roughly equivalent to 0.02 to 0.10 gr/dscf. However, available test data show that the actual performance achieved by pouring control systems is an outlet PM concentration of 0.010 gr/dscf or less. Consequently, State limits or permit conditions cannot function as a reasonable proxy for actual emissions from pouring stations and pouring areas.

*Pouring stations.* Baghouses are used to control 178 (or 13 percent) of the existing pouring stations and wet scrubbers are used to control 35 (or three percent) of the pouring stations. The majority of pouring stations (1,104 pouring stations or 84 percent) do not control PM (or metal HAP) emissions.

As with melting furnaces, we determined the MACT floor for new and existing by ranking the pouring stations based on the available emissions information. Emissions information was available for 1,317 pouring stations. Again, two types of emissions information was used to determine the MACT floor—source test data, and engineering design parameters including control type and outlet PM concentration design values.

Where we had emissions source test data for a furnace, we used the emissions data to estimate the emissions limitation achieved for that furnace. Outlet EPA Method 5 performance data for PM were available for 11 controlled pouring station vent streams at nine foundries. As discussed earlier, the MACT floor performance limit must include a consideration for the variability inherent in the process operations and the control device performance. Therefore, we used the statistical method discussed earlier to estimate the emissions limitation achieved by a furnace when emissions source test data were available.

When emissions source test data were not available, we estimated the emissions limitation achieved by that furnace based on other emissions information obtained from the detailed survey including control type, outlet PM concentration design values, and design PM removal efficiencies. These data were used to estimate the emission reduction limitation achieved for the remaining 140 electric arc furnaces

where we did not have stack test emissions data.

Additional information on the ranking of the sources used to determine the MACT floor, including the data used, details of the statistical analysis performed, and the estimated emissions limitation achieved for each furnace, is available in the docket for the proposed rule.

We again use the 6th percentile unit as the most representative estimate of the average emissions limitation achieved by the best performing 12 percent of existing sources because the 6th percentile points to specific control device and performance limit. The 6th percentile of 1,317 sources is the performance of the 79th best performing unit. Based on our ranking of the emissions limitation achieved by these pouring stations, we determined that the MACT floor for metal HAP control at existing sources is a PM emissions concentration of 0.010 gr/dscf. Based on available emissions test data, we believe that existing sources can achieve an emissions limitation of 0.010 gr/dscf using a well-designed and operated baghouse or wet scrubber to control emissions.

For new sources, the MACT floor is the emissions control that is achieved in practice by the best-controlled similar source. Based on our ranking, the best-controlled pouring station achieves an emissions limitation of 0.002 gr/dscf. There appeared to be no technological reason why the best-performing pouring stations achieved significantly lower PM concentrations than the other control systems in the MACT pool. However, as discussed earlier for melting furnaces, it does appear that technologies exist that can achieve these low outlet PM concentrations. Furthermore, it appears that there are several pouring stations at iron and steel foundries that currently meet a 0.002 gr/dscf emissions limit. Therefore, the MACT floor for metal HAP control for pouring stations at new affected sources is an average PM concentration of 0.002 gr/dscf or less.

Next, we evaluated regulatory options that were more stringent than the MACT floor. One option we evaluated was to require existing pouring areas to meet a 0.002 gr/dscf PM emissions limit. However, this option was rejected because the cost per ton of HAP reduced is expected to exceed \$250,000 per ton. We do not know of any other control options that would result in lower emissions than the MACT floor options.

Therefore, the proposed MACT standards for metal HAP are based on the MACT floor performance limits for new and existing sources. For pouring stations at existing sources, the MACT

standard is an average PM concentration of 0.010 gr/dscf or less. For pouring stations at new sources, the proposed MACT standard is an average PM concentration of 0.002 gr/dscf or less.

*Pouring areas.* We have information on 435 pouring areas from the industry survey. Baghouses are used to control 20 (or 4.6 percent) of these pouring areas and wet scrubbers are used to control two (or 0.5 percent) of the pouring areas. A total of 413 (or 95 percent) of the 435 pouring areas do not control pouring emissions.

Only 5 percent of pouring areas employ a capture and control system for pouring emissions. We have interpreted the MACT floor for existing sources to be the performance achieved by the median source of the top 12 percent best performing sources, which would be the 6th percentile unit. We use the 6th percentile unit because it points to a specific control technology and performance limit and more accurately reflects the central tendency in terms of the level of performance achieved by an actual unit. An arithmetic average of the emissions reduction achieved by the top 12 percent of sources for which we have emissions data would not reflect the performance of any actual unit or any actual control technology, and it would reflect a level of emissions performance that the majority of units in the top 12 percent are not currently able to achieve. Consequently, we believe it is more reasonable to use the performance of the median unit to establish the MACT floor. Accordingly, add-on controls are not part of the MACT floor for pouring areas. Because controlling HAP in the input materials is the only other measure that existing facilities use to reduce HAP emissions from these units, the MACT floor for existing units is limited to the metal HAP reduction achieved by the scrap selection and inspection program that was identified as part of the MACT floor for the entire metal casting department.

We based the MACT floor for new pouring areas on the emissions reductions achieved by the best controlled pouring area. A few facilities do capture and control metal HAP emissions from the pouring area. However, we do not have any stack test emissions data for pouring areas. As such, we ranked the available information on pouring area controls based on reported outlet concentration design performance values and the percent removal design value for each control system. Based on our ranking, the best-controlled pouring area achieves an emissions limitation of 0.002 gr/dscf. We believe that this emissions limit is achievable and

reasonable. Existing technologies can consistently achieve this level of control. Therefore, the MACT floor for metal HAP control for pouring areas at new affected sources is an average PM concentration of 0.002 gr/dscf or less.

Next, we evaluated regulatory options that were more stringent than the MACT floor. One option we evaluated was to require existing pouring areas to meet a 0.010 gr/dscf PM emissions limit. However, this option was rejected because the cost per ton of HAP reduced is expected to exceed \$250,000 per ton. We also evaluated requiring existing pouring stations to meet a 0.002 gr/dscf PM emissions limit. This option was also rejected because the cost per ton of additional HAP removed is estimated to exceed \$500,000 per ton.

Therefore, the proposed MACT standards for metal HAP are based on the MACT floor performance limits for new and existing sources. For pouring areas at existing sources, no additional requirements are proposed beyond the scrap selection and inspection requirements identified as a component of MACT for the entire metal casting department. For pouring areas at new sources, the proposed MACT standard is an average PM concentration of 0.002 gr/dscf or less.

#### *E. How Did We Determine the Basis and Level of the Proposed Standards for the Emissions Sources in the Mold and Core Making Department?*

Emissions of HAP from mold and core making departments arise from three sources: the catalyst gas exhaust vent (gas cured systems only), curing and storage, and coating.

##### *Catalyst Gas Exhaust Vent*

Some mold and core making binder systems use a catalyst gas to cure the chemical binder. The catalyst gas does not react in the process but passes unchanged through the form and is released to the atmosphere unless it is collected and controlled. Of the binder systems that use catalyst gasses, only the phenolic urethane cold box binder system uses a gas that contains a HAP. The phenolic urethane cold box binder system uses triethylamine, a HAP, as the catalyst gas. None of the other catalyst gases used in the iron and steel foundry system are believed to contain HAP. The triethylamine phenolic urethane cold box binder system is one of the dominant binder systems in use at iron and steel foundries, especially at high volume automated production lines, due to the fast curing time of this system.

In establishing MACT for the catalyst gas exhaust vent, we first evaluated the

controls used on the existing phenolic urethane cold box mold and core making lines. Of the 469 phenolic urethane cold box mold and core making lines operated by iron and steel foundries, emissions from 335 (71 percent) are controlled by wet scrubbing with acid solution, seven are controlled by incineration methods such as afterburning or regenerative thermal oxidation, four are controlled by condensers, and the remaining lines are uncontrolled.

Acid wet scrubbers are very effective at controlling triethylamine emissions. The triethylamine reacts rapidly and irreversibly in the acid solutions used as the scrubber solution. As expected, the available source test data indicate that acid wet scrubbers are highly effective in controlling triethylamine emissions. We have reliable performance test data for seven acid wet scrubbers at six foundries. Inlet and outlet measurements were conducted across five of the scrubbers, while only outlet measurements were conducted for the sixth acid wet scrubber. Each test consisted of three individual runs. One test was conducted using EPA Method 19, the standard reference method we use for the measurement of organic compound emissions from stationary sources; one test was conducted using both EPA Method 19 (inlet) and the National Institute for Occupational Safety and Health (NIOSH) Method 221 (Outlet); two tests were conducted using NIOSH Method 2010; and no test method was identified for the remaining two tests.

In all but one of the tests, the outlet emissions were lower than the quantitative limit of the sampling and analytical method used. The controlled triethylamine concentrations for the single source test with quantitative triethylamine concentrations in the acid wet scrubber exhaust ranged from 0.29 to 0.34 ppmv. This scrubber experienced the highest inlet triethylamine concentrations (ranging from 209 to 255 ppmv) and achieved an average emissions reduction of 99.8 percent. In the other tests, outlet concentrations were below detection limits, which ranged from less than 0.03 to less than 1.5 ppmv. While the true removal efficiencies cannot be determined because the outlet concentrations were below detection limits, estimating the outlet emissions at one half the detection limit provides removal efficiency estimates ranging from 98 to 99.9 percent.

We have no emissions data on the seven phenolic urethane cold box lines controlled by incineration or condensation. However, based on



extensive studies on source types where incinerators have been applied, we have seen that properly designed and operated incinerators are capable of achieving a 98 percent removal efficiency down to an outlet concentration of 20 ppmv. Likewise, our studies have shown that condensers are typically only capable of achieving a removal efficiency of up to 95 percent. Based on this information and the data we have for triethylamine scrubbers, we believe that wet scrubbing is superior to both incinerators and condensers for the purpose of removing triethylamine emissions from the catalyst gas exhaust vent. As acid wet scrubbers are employed at well over 12 percent of the triethylamine phenolic urethane cold box mold and core making lines, the MACT floor for triethylamine control is characterized by the level of control achieved by wet scrubbing with acid solution.

Next we established the emissions limit based on the available emissions data for acid wet scrubbers applied to triethylamine phenolic urethane cold box mold and core making lines. As discussed above, all of the emissions data on the exhaust of the acid wet scrubbers were very low and were for the most part below the detection limit. The EPA Method 18 is the EPA-approved method applicable for determining triethylamine concentrations in the acid wet scrubber exhaust stream. The detection limit for EPA Method 18 is generally considered to be 1 ppmv. Based on the available emissions data and considering the quantitative limit associated with the applicable EPA test method for this emissions source, we select a 1 ppmv triethylamine outlet concentration as the existing source MACT floor level of control.

As no other emissions control device is known that can achieve a higher triethylamine emissions reduction than acid wet scrubbers and considering the quantitative limits associated with the applicable EPA test method for this emissions source, the new source MACT is the same as the existing source MACT, which is a 1 ppmv triethylamine outlet concentration. We believe this emissions limit is achievable by a properly designed and operated acid wet scrubber. For some triethylamine phenolic urethane cold box mold and core making lines, it may also be possible to achieve this emissions limit using a thermal combustion device.

#### Mold and Core Curing and Storage

Organic HAP emissions arise from evaporation of HAP constituents contained in binder chemical

formulations during mold and core curing and storage. These emissions are fugitive in nature and are not subject to capture and control at any iron and steel foundries. Furthermore, no suitable control technology could be identified to reduce the HAP emissions from this source due to the low concentrations of HAP in the fugitive emissions. However, in response to VOC regulations, binder manufacturers are developing and evaluating new binder systems or re-formulations of existing binder systems to reduce VOC emissions. These new binder systems may also reduce HAP content of the binder system, which effects a reduction in the HAP emissions from mold and core curing and storage. Therefore, pollution prevention practices regarding reduced HAP binder formulations were evaluated.

In general, foundries cannot readily switch from one binder system to another because the binder systems are primarily selected based on the required properties and dimensions of the cast part being manufactured. Binder selection must consider the size of the casting (which affects the size and strength requirements of the mold and cores), the complexity of the cast shape and the tolerance requirements on the dimensions of the casting, the metal surface finish requirements of the casting, and the production rate of the foundry. In some cases, different equipment may be required or additional space needed for storage (due to slower cure times). Consequently, it is not feasible for EPA to dictate the type of binder system used at new or existing foundries solely on the basis of the HAP emissions potential of the currently available binder systems. Such a requirement would not only adversely impact the quality of the castings produced, it would also limit the ongoing advances in the development of new, low HAP-containing binder systems.

Within a given binder system, there are different chemical formulations of that binder system, some of which may have reduced HAP content. These different formulations are also selected by the foundry based on the quality requirements of the casting, strength requirements of the mold, and curing times (*i.e.*, production rates). Differences in formulations may also be required based on regional or seasonal variations in temperature and humidity for optimum binder performance. Again, it is difficult to prescribe the use of specific low-HAP binder formulations without negatively impacting cast part quality. However, a foundry may more readily use a re-formulated binder

system of the same type than to change the type of binder system altogether.

The available binder systems were evaluated based on consultation with binder chemical manufacturers to identify low-HAP formulations. Low-HAP formulations were identified for three binder systems that appear to provide the same performance characteristics as their traditional counterpart while achieving HAP emissions reductions. That is, we believe these low-HAP emitting binder systems can be used to replace their traditional counterparts with no adverse impacts on the production process or the quality of the product. These three systems are: Furan warm box, phenolic urethane cold box, and phenolic urethane nobake.

*MACT for furan warm box binder system formulations.* Methanol is the only significant HAP emitted from mold and core making lines using traditional formulations of furan warm box. According to industry suppliers, the furan warm box system can be formulated without methanol. A water-based, HAP-free system is used in at least 23 (42 percent) of the 55 furan warm box lines used in iron and steel foundries. We believe that methanol-free systems can readily substitute for other coating systems. Therefore, we are proposing a work practice standard as the MACT floor for both existing and new mold and core making lines using the furan warm box system. The proposed work practice standard requires the use of a furan warm box formulation that does not include methanol as a specific ingredient. The proposed standard for furan warm box mold and core making lines is the work practice of using a chemical formulation which does not contain methanol as a specific ingredient.

*MACT for phenolic urethane cold box and phenolic urethane nobake binder system formulation.* The phenolic urethane cold box and phenolic urethane nobake systems use solvents that may contain up to 10 percent naphthalene along with lesser amounts of cumene and xylene, all of which are HAP. These solvents are petroleum distillate products. The only emissions reduction practice used for these systems is the use of a formulation with an alternative distillate fraction, termed naphthalene-depleted solvent, that contains a maximum of 3 percent naphthalene and correspondingly lesser amounts of cumene and xylene. Iron and steel foundries employ 439 phenolic urethane cold box lines and 266 phenolic urethane nobake lines. At least three foundries are known to use

binder chemicals with a naphthalene-depleted solvent.

Considering the above information, we are establishing a work practice standard as the new source MACT floor for phenolic urethane cold box/phenolic urethane nobake mold and core making lines. This proposed standard requires the use of a formulation with naphthalene-depleted solvent. Because fewer than 6 percent of the sources currently use naphthalene depleted solvents, the MACT floor for existing sources is the use of the traditional naphthalene solvent, which reflects no reduction in emissions of organic HAP.

In selecting the MACT standard for existing sources, we also examined the costs associated with requiring naphthalene-depleted solvent formulations of phenolic urethane cold box/phenolic urethane nobake binder systems at existing sources as a beyond-the-floor control option. According to information from industry sources, these solvents are available at a premium of 3 to 5 cents per pound over the price of the regular solvent. Using the 5 cents per pound figure, the price increase relates to a cost of 71 cents per pound of naphthalene reduced in the solvent (from 10 to 3 percent). By our estimate, 9 percent of the naphthalene evaporates during mold or core making; thus, the cost to reduce naphthalene emissions would be \$7.94 per pound, or \$15,900 per ton.

Our cost estimate is made assuming that enough naphthalene-depleted solvent is available to supply all major source foundries. The phenolic urethane cold box and phenolic urethane nobake binder systems are the primary binder systems used by foundries, especially high production foundries likely to be major sources of HAP emissions. Therefore, the availability of an adequate supply of naphthalene-depleted solvent is a significant concern. The availability question cannot be answered without additional input from the foundry industry and its suppliers and, therefore, we invite comment on this issue.

Based on the tentative assumption that an adequate supply of naphthalene-depleted solvent is available, we propose to establish a work practice standard requiring the use of naphthalene-depleted solvent in all phenolic urethane cold box and phenolic urethane nobake binder formulations for both new and existing mold and core making lines.

*MACT for other chemical binder systems.* The HAP content of systems other than the furan warm box, phenolic urethane cold box, and phenolic

urethane nobake systems cannot be systematically reduced or eliminated because the quality of the cast part or some required feature of the mold or core, such as strength, speed of curing, and shelf life cannot otherwise be maintained. Therefore, the new and existing MACT floors for mold and core making lines using chemical binder systems other than the furan warm box, phenolic urethane cold box, and phenolic urethane nobake systems are no change in formulation, reflecting no reduction in HAP emissions. However, there may be instances where reduced-HAP binder formulations may be suitable for a given foundry's mold and core making line based on the type of castings produced. Additionally, new binder formulations are constantly being developed, and many of these have reduced HAP content. Therefore, we believe that a work practice standard that requires an initial evaluation of available binder systems, and alternative binder formulations to identify applicable binder systems or formulations that reduce HAP emissions are warranted. As proposed, a foundry operator must either adopt a reduced-HAP binder system or provide technical and/or economic rationale as to why the currently available alternative systems are inappropriate for their foundry. The binder system evaluation report is required to be updated each permit renewal period. As this requirement is considered to be beyond the floor, costs may be considered when evaluating alternative binder systems or formulations.

*MACT for mold and core coating.* The HAP emissions arise during the evaporation of liquid components after application of the coating material. The two emissions reduction measures employed are the light-off procedure and the use of a coating formulation with no HAP in the liquid component (the solid component may contain chromite, for example, but we do not expect this component to be emitted). Although we have no specific data on emissions from the light-off procedure, reductions cannot be greater than those achieved by eliminating HAP from the formulation. Coatings based on water or non-HAP alcohols are used in 1,145 (86 percent) of the 1,335 mold and core making lines. By comparison, 29 lines use methanol and there are 161 lines that use an unidentified alcohol or an unidentified substance that may or may not be a HAP. Although we have no definitive information regarding possible substitutions for these unidentified substances, the predominance of lines that use

formulations without HAP strongly suggests that substitutions can be made. Therefore, we are establishing a work practice standard as the MACT floor for HAP emissions from mold and core making lines at existing mold and core coating departments. This standard would require use of coating formulations that do not contain HAP as a specific ingredient in the liquid component. Since no more stringent measure of emissions reductions exist, we choose the work practice of using coating formulations that contain no HAP in the liquid component as a specific ingredient as the standard for both new and existing mold and core making lines. We request comment on the availability and feasibility of coating formulations that contain no HAP in the liquid component for all mold and core coating applications.

#### *F. How Did We Select the Proposed Initial Compliance Requirements?*

We selected initial compliance requirements that will:

- Establish compliance with emissions limits,
- Determine operating limits on capture systems and control devices that will be used to demonstrate continuous compliance with emissions limits, and
- Confirm that equipment, materials, and procedures are in place that will provide compliance with work practice standards.

The proposed rule would require a performance test for each emissions source subject to a PM or triethylamine emissions limit to demonstrate initial compliance. Foundries would be required to measure PM using EPA Method 5 (or variations) and triethylamine using Method 18 (40 CFR part 60, appendix A). We would also require that operating limits for parameters relevant to control device performance be determined during the initial compliance test to ensure that the control devices operate properly on a continuing basis. All operating limits must be established during a performance test that demonstrates compliance with the applicable emissions limit. During Method 5 performance tests for PM, operating limits must be established for pressure drop and scrubber water flowrate for wet scrubbers. During Method 18 performance tests for triethylamine, operating limits must be established for scrubbing liquid flowrate and blowdown pH for wet scrubbers or combustion temperature for thermal oxidizers. Operating limits for capture systems would be established in the O&M plan.

Foundries using CEMS would be required to conduct performance evaluations, followed by a performance test comprised of 3 continuous hours of measurements. Operating limits would not apply to control devices equipped with CEMS because emissions would be directly measured.

Initial compliance with the various work practice standards is achieved through submission of written plans, establishment of the practices, and certification of such in the notification of compliance.

#### *G. How Did We Select the Proposed Continuous Compliance Requirements?*

We selected continuous compliance requirements that will:

- Periodically confirm compliance with emissions limits through performance testing,
- Verify that control devices are operating in a manner that provides compliance with the emissions limits, and
- Maintain the use of equipment, materials, and procedures that are required to provide compliance with work practice standards.

We chose a periodic performance testing schedule which is consistent with current permit requirements. We consulted with several States on how they were implementing title V permitting requirements for performance tests. In general, performance tests are repeated every 2.5 to 5 years, depending on the size of the source. Consequently, we decided that performance tests should be repeated every 5 years.

We also developed procedures to ensure that control equipment is operating properly on a continuous basis. When baghouses are used, the alarm for the a bag leak detection system must not sound for more than 5 percent of the time in any semiannual reporting period. Wet scrubbers controlling PM emissions must be monitored for pressure drop and scrubber water flowrate, which must not fall below the limits established during the performance test. Wet acid scrubbers used for triethylamine emissions control must be monitored for scrubber liquid flowrate and blowdown pH; the flowrate must not fall below the limit established during the performance test, and the pH must not rise above the limit established during the performance test. For afterburners used for triethylamine emissions control, the combustion zone temperature must not fall below the level determined during the performance test. Foundries would be allowed to select site-specific operating parameters to monitor for capture

systems. The proposed rule also includes inspection and maintenance requirements for CPMS.

We also developed procedures to ensure that the work practice standards are met. The scrap specification and inspection program would be verified through written scrap specifications and maintaining appropriate records of the scrap inspections. Mold vent offgas ignition must be routinely verified. All work practice standards regarding limits on the coating and binder formulations for mold and core making would be verified by maintaining appropriate records.

#### *H. How Did We Select the Proposed Notification, Recordkeeping, and Reporting Requirements?*

We selected the proposed notification, recordkeeping, and reporting requirements to be consistent with the NESHAP General Provisions (40 CFR part 63, subpart A). These requirements are necessary and sufficient to demonstrate initial and continuous compliance.

### **IV. Summary of Environmental, Energy, and Economic Impacts**

#### *A. What Are the Air Quality Impacts?*

Most iron and steel foundries have had emissions controls in place for many years similar to those we are proposing to require. The primary impact of the PM standards will be to require cupolas that are currently using venturi scrubbers to control emissions more effectively, most likely by replacing the scrubbers with baghouses. We project that these controls would reduce metal HAP emissions by about 120 tpy.

Establishment of a standard of 1 ppmv triethylamine emissions limitation would result in triethylamine emissions reductions of 146 tpy from the two foundries that do not presently control emissions; the VOC limit would result in additional organic HAP emissions reductions of 4 tpy from two foundries that do not presently control these emissions from cupolas. The EPA believes that a requirement for non-HAP coating formulations, methanol-free binder system formulations for furan warm box binder systems, naphthalene-depleted solvents, and reduced-HAP binder system formulations would reduce organic HAP emissions by as much as 790 tpy.

Overall, we expect the proposed standards to reduce HAP emissions by over 900 tpy—a 40 percent reduction from the current level of nationwide HAP emissions from iron and steel foundries. Concurrent with the

reduction in HAP emissions, the proposed NESHAP is also expected to reduce PM and VOC emissions by 3,600 tpy.

#### *B. What Are the Cost Impacts?*

The nationwide total annualized cost of the proposed rule, including monitoring, recordkeeping, and reporting would be \$21.7 million. This cost includes the annualized cost of capital and the annual operating and maintenance costs for supplies, control equipment, monitoring devices, and recordkeeping media. The nationwide total capital cost of the proposed rule would be \$141 million.

The capital costs associated with the proposed rule are primarily due to the costs of installing modular pulse-jet baghouse systems to control emissions of metal HAP and PM from cupolas currently controlled using venturi scrubbers which is estimated to cost approximately \$110 million. This capital cost estimate includes the cost of removing the venturi scrubbers and installing modular pulse-jet baghouse systems. Based on information provided by the iron and steel foundry industry, we used a retrofit cost factor of 2.0 (*i.e.*, the cost of installing a baghouse at an existing facility was estimated to be 2.0 times the cost of installing an identical baghouse at a new facility). This retrofit cost factor is considerably higher than the typical retrofit costs suggested by the literature (typical retrofit cost factors range from 1.2 to 1.5). We request comments and supporting data on the appropriateness of such a high retrofit cost factor.

As the cost of operating a baghouse is less than the cost of operating a PM wet scrubber due to lower energy consumption (lower pressure drop) of the baghouse system and the avoidance of wastewater treatment/disposal costs, the annual operating and maintenance cost of the proposed rule is actually estimated to be less than the cost of operating the current control equipment for cupolas. Therefore, there would be a net savings in the annual operating and maintenance costs for baghouses over venturi scrubbers of roughly \$7 million. The nationwide total annual cost (including capital recovery) for complying with the PM emission limit for cupolas is estimated at \$2.9 million per year.

The cost impacts would also include:

- The cost of installing and operating baghouses on currently uncontrolled electric induction furnaces;
- The cost of installing and operating baghouses on currently uncontrolled pouring stations;

- The cost of installing and operating triethylamine scrubbers for currently uncontrolled triethylamine cold box mold and core making lines;

- The additional cost of using replacement naphthalene-depleted solvent in sand binder chemicals;

- The cost of installing and operating monitoring equipment (predominantly baghouse leak detectors for PM sources) on melting furnace exhaust streams, pouring, cooling, and shakeout lines, triethylamine scrubbers, and VOC afterburners; and

- The cost of electronic and paper recordkeeping media.

### C. What Are the Economic Impacts?

We conducted a detailed assessment of the economic impacts associated with the proposed rule. The compliance costs associated with the proposed rule are estimated to increase the price of iron and steel castings by less than 0.1 percent with domestic production declining by almost 8,000 tons in aggregate. The analysis also indicates no impact on the market for foundry coke, which is used by cupolas in the production of iron castings.

Through the market impacts described above, the proposed rule would have distributional impacts across producers and consumers of iron and steel castings. Consumers are expected to incur \$13.5 million of the overall regulatory burden of \$21.7 million because of higher prices and forgone consumption. Domestic producers of iron and steel castings are expected to experience profit losses of \$9.2 million due to compliance costs and lower output levels, while foreign producers would experience profit gains of \$1 million associated with the higher prices. For more information, consult the economic impact analysis supporting the proposed rule that is available in the docket.

### D. What Are the Non-Air Health, Environmental, and Energy Impacts?

The proposed rule would provide positive secondary environmental and energy impacts. Primarily due to the lower energy requirements for operating a baghouse versus a wet scrubber, the proposed rule is projected to reduce annual energy consumption by 130,000 megawatt hours per year. This would lead to reduced nitrogen oxides and sulfur oxides emissions from power plants of roughly 230 tons per year and 490 tons per year, respectively. The replacement of wet scrubbers with baghouses is also responsible for the proposed rule's estimated 14.6 billion gallons per year reduction in water consumption and disposal rates.

Although baghouses have slightly higher dust collection efficiencies, the dust is collected in a dry form while PM collected using a wet scrubber contains significant water even after dewatering processes. Therefore, the total volume and weight of solids disposed under the proposed rule is estimated to be approximately the same as, if not less than, the current solid waste disposal rates.

### V. Solicitation of Comments and Public Participation

We seek full public participation in arriving at final decisions and encourage comments on all aspects of this proposal from interested parties. You must submit full supporting data and a detailed analysis with your comments to allow us to make the best use of them. Be sure to direct your comments to Docket ID No. OAR-2002-0034 (see ADDRESSES).

### VI. Statutory and Executive Order Reviews

#### A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

- (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

- (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

- (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that the proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

#### B. Paperwork Reduction Act

The information collection requirements in the proposed rule will be submitted for approval to OMB under

the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection request (ICR) document has been prepared by EPA (ICR No. 2096.01), and a copy may be obtained from Susan Auby by mail at the Office of Environmental Information, Collection Strategies Division (2822T), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at [auby.susan@epa.gov](mailto:auby.susan@epa.gov), or by calling (202) 566-1672. A copy also may be downloaded off the Internet at <http://www.epa.gov/icr>. The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to NESHAP. These recordkeeping and reporting requirements are specifically authorized by section 112 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B.

The proposed rule would require applicable one-time notifications required by the General Provisions for each affected source. As required by the NESHAP General Provisions, all plants would be required to prepare and operate by a startup, shutdown, and malfunction plan. Plants also would be required to prepare an O&M plan for capture systems and control devices; a scrap selection and inspection plan; and a report on available reduced-HAP binder formulations. Records would be required to demonstrate continuous compliance with the O&M requirements for capture systems and control devices and requirements for monitoring systems. Semiannual compliance reports also are required. These reports would describe any deviation from the standards; any period a continuous monitoring system was "out-of-control"; or any startup, shutdown, or malfunction event where actions taken to respond were consistent with startup, shutdown, and malfunction plan. If no deviation or other event occurred, only a summary report would be required. Consistent with the General Provisions, if actions taken in response to a startup, shutdown, or malfunction event are not consistent with the plan, an immediate report must be submitted within 2 days of the event with a letter report 7 days later.

The annual public reporting and recordkeeping burden for this collection

of information (averaged over the first 3 years after the effective date of the final rule) is estimated to total 26,389 labor hours per year at a total annual cost of \$2,884,840 including labor, capital, and operation and maintenance.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the EPA's need for this information, the accuracy of the burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division (2822T), U.S. EPA (2136), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after December 23, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by January 22, 2003. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

*C. Regulatory Flexibility Act (RFA) as Amended by Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a

significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the proposed rule on small entities, small entity is defined as: (1) A small business according to the U.S. Small Business Administration size standards for NAICS codes 331511 (Iron Foundries), 331512 (Steel Investment Foundries), and 331513 (Steel Foundries, except Investment) of 500 or fewer employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

In accordance with the RFA, we conducted an assessment of the proposed rule on small businesses within the iron and steel castings manufacturing industry. Based on SBA size definitions for the affected industries and reported sales and employment data, we identified 20 of the 63 companies incurring compliance costs as small businesses. These small businesses are expected to incur \$4.7 million in compliance costs, or 22 percent of the total industry compliance costs of \$21.7 million. Under the proposed rule, the mean annual compliance cost as a share of sales for small businesses is 0.64 percent, and the median is 0.35 percent, with a range of 0.03 to 2.36 percent. We estimate that four of the 20 small businesses may experience an impact greater than 1 percent of sales, but no small businesses will experience an impact greater than 3 percent of sales. While a few small firms may experience initial impacts greater than 1 percent of sales, no significant impacts on their viability to continue operations and remain profitable are expected. See Docket A-2000-34 for more information on the economic analysis.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

Although the proposed rule would not have a significant economic impact on a substantial number of small entities, we have nonetheless worked to minimize the impact of the proposed rule on small entities, consistent with our obligations under the CAA. We have discussed potential impacts and opportunities for emissions reductions with company representatives, and

company representatives have also attended meetings held with industry trade associations to discuss the proposed rule. 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.

*D. Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the 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 the 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 the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed rule does not contain 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 in any 1 year. The maximum total annual cost of the proposed rule for any year has been

estimated to be \$6.8 million. Thus, today's proposed rule is not subject to sections 202 and 205 of the UMRA. In addition, the EPA has determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

#### *E. Executive Order 13132, Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." The 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. None of the affected facilities are owned or operated by State governments and the proposed rule would not preempt any State laws that are more stringent. In addition, the proposed rule is required by statute and, if implemented, will not impose any substantial direct compliance costs. Thus, the requirements of section 6 of the Executive Order do not apply to the proposed rule.

#### *F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input in the development of regulatory policies on matters that have tribal implications." The proposed rule does not have tribal implications, as specified in Executive Order 13175. No tribal governments own or operate iron and steel foundries. The proposed rule is required by statute and will not impose any substantial direct compliance costs.

Thus, Executive Order 13175 does not apply to the proposed rule.

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

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant," as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. The proposed rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

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

The proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. No. 104-113; 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, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the OMB, with explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The proposed rule involves technical standards. The EPA proposes in the proposed rule to use EPA Methods 1,

1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 5, 5D, and 18 in 40 CFR part 60, appendix A. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, and 5D. The search and review results have been documented and are placed in the docket for the proposed rule.

The search for emissions measurement procedures identified 17 voluntary consensus standards applicable to the proposed rule. The EPA determined that 14 of these 17 standards were impractical alternatives to EPA test methods for the purposes of the proposed rule. Therefore, EPA does not propose to adopt these standards today. The reasons for this determination for the 14 methods are in docket for the proposed rule.

The following three of the 17 voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of this proposed rule because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, "Flow Measurement by Velocity Traverse," for EPA Method 2 (and possibly 1); ASME/BSR MFC 12M, "Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters," for EPA Method 2; and ISO/DIS 12039, "Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods," for EPA Method 3A. While we are not proposing to include these three voluntary consensus standards in today's proposal, the EPA will consider the standards when final.

The EPA takes comment on the compliance demonstration requirements in the proposed rule and specifically invites the public to identify potentially-applicable voluntary consensus standards. Commentors should also explain why the proposed rule should adopt these voluntary consensus standards in lieu of or in addition to EPA's standards. Emissions test methods submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR part 63, appendix A, was used).

Section 63.7732 of the proposed rule lists the EPA test methods for use in emissions tests. Under § 63.8 of the NESHAP General Provisions (40 CFR part 63, subpart A), a source may apply to EPA for permission to use alternative

monitoring in place of any of the EPA testing methods.

#### List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 26, 2002.

**Christine Todd Whitman,**  
*Administrator.*

For the reasons stated in the preamble, title 40, chapter I, part 63 of the CFR is proposed to be amended as follows:

#### PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

2. Part 63 is amended by adding subpart EEEEE to read as follows:

#### Subpart EEEEE—National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries

Sec.

##### What This Subpart Covers

- 63.7680 What is the purpose of this subpart?  
63.7681 Am I subject to this subpart?  
63.7682 What parts of my foundry does this subpart cover?  
63.7683 When do I have to comply with this subpart?

##### Emissions Limitations

- 63.7690 What emissions limitations must I meet?

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- 63.7700 What work practice standards must I meet?

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- 63.7710 What are my operation and maintenance requirements?

##### General Compliance Requirements

- 63.7720 What are my general requirements for complying with this subpart?

##### Initial Compliance Requirements

- 63.7730 By what date must I conduct performance tests or other initial compliance demonstrations?  
63.7731 When must I conduct subsequent performance tests?  
63.7732 What test methods and other procedures must I use to demonstrate initial compliance with the emissions limitations?  
63.7733 What procedures must I use to establish operating limits?  
63.7734 How do I demonstrate initial compliance with the emissions limitations that apply to me?  
63.7735 How do I demonstrate initial compliance with the work practice standards that apply to me?

- 63.7736 How do I demonstrate initial compliance with the operation and maintenance requirements that apply to me?

##### Continuous Compliance Requirements

- 63.7740 What are my monitoring requirements?  
63.7741 What are the installation, operation, and maintenance requirements for my monitors?  
63.7742 How do I monitor and collect data to demonstrate continuous compliance?  
63.7743 How do I demonstrate continuous compliance with the emissions limitations that apply to me?  
63.7744 How do I demonstrate continuous compliance with the work practice standards that apply to me?  
63.7745 How do I demonstrate continuous compliance with the operation and maintenance requirements that apply to me?  
63.7746 What other requirements must I meet to demonstrate continuous compliance?

##### Notifications, Reports, and Records

- 63.7750 What notifications must I submit and when?  
63.7751 What reports must I submit and when?  
63.7752 What records must I keep?  
63.7753 In what form and for how long must I keep my records?

##### Other Requirements and Information

- 63.7760 What parts of the General Provisions apply to me?  
63.7761 Who implements and enforces this subpart?  
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##### Tables to Subpart EEEEE of Part 63

Table 1 to Subpart EEEEE of Part 63—Applicability of General Provisions to Subpart EEEEE

##### What This Subpart Covers

#### § 63.7680 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for iron and steel foundries. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emissions limitations, work practice standards, and operation and maintenance requirements in this subpart.

#### § 63.7681 Am I subject to this subpart?

You are subject to this subpart if you own or operate an iron and steel foundry that is (or is part of) a major source of hazardous air pollutant (HAP) emissions on the first compliance date that applies to you. Your iron and steel foundry is a major source of HAP if it emits or has the potential to emit any single HAP at a rate of 10 tons or more

per year or any combination of HAP at a rate of 25 tons or more per year.

#### § 63.7682 What parts of my foundry does this subpart cover?

(a) This subpart applies to each new or existing affected source at your iron and steel foundry.

(b) Affected sources covered by this subpart are each new or existing metal casting department and each new or existing mold and core making department at your iron and steel foundry.

(c) This subpart covers emissions from each metal melting furnace, scrap preheater, pouring area, pouring station, and pouring, cooling, and shakeout line in a new or existing metal casting department and each mold and core making line and mold and core coating line in a new or existing mold and core making department.

(d) An affected source at your iron and steel foundry is existing if you commenced construction or reconstruction of the affected source on or before December 23, 2003.

(e) An affected source at your iron and steel foundry is new if you commence construction or reconstruction of the affected source after December 23, 2002. An affected source is reconstructed if it meets the definition of “reconstruction” in § 63.2.

#### § 63.7683 When do I have to comply with this subpart?

(a) For each existing affected source, you must comply with each emissions limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you no later than [3 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(b) For each new affected source for which its initial startup date is on or before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must comply with each emissions limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you by [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) For each new affected source for which its initial startup date is after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must comply with each emissions limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you upon initial startup.

(d) If your iron and steel foundry is an area source that becomes a major source of HAP, you must meet the requirements of § 63.6(c)(5).

(e) You must meet the notification and schedule requirements in § 63.7750. Note that several of these notifications must be submitted before the compliance date for your affected source.

### Emissions Limitations

#### § 63.7690 What emissions limitations must I meet?

(a) You must meet each emissions limit in paragraphs (a)(1) through (8) of this section that applies to you.

(1) You must control emissions of particulate matter from a metal melting furnace or scrap preheater at an existing metal casting department to a level that does not exceed 0.005 grains per dry standard cubic foot (gr/dscf).

(2) You must control emissions of particulate matter from a metal melting furnace or scrap preheater at a new metal casting department to a level that does not exceed 0.001 gr/dscf.

(3) You must control emissions of particulate matter from a pouring station at an existing metal casting department to a level that does not exceed 0.010 gr/dscf.

(4) You must control emissions of particulate matter from a pouring area or pouring station at a new metal casting department to a level that does not exceed 0.002 gr/dscf.

(5) You must control emissions of carbon monoxide from a cupola at a new or existing metal casting department to a level that does not exceed 200 parts per million by volume (ppmv).

(6) You must reduce emissions of volatile organic compounds from a scrap preheater at a new or existing metal casting department by 98 percent by weight or to a level that does not exceed 20 ppmv as propane.

(7) You must reduce emissions of volatile organic compounds from all pouring, cooling, and shakeout lines at a new metal casting department, on a flow-weighted average basis, by 98 percent by weight or to a level that does not exceed 20 ppmv as propane.

(8) You must reduce emissions of triethylamine from a triethylamine cold box mold or core making line at a new or existing mold and core making department to a level that does not exceed 1 ppmv.

(b) You must meet each operating limit in paragraphs (b)(1) through (6) of this section that applies to you.

(1) For each emissions source subject to an emissions limit under paragraph (a) of this section, you must capture and vent emissions through a capture system that maintains a face velocity of at least 200 feet per minute. You must operate

each capture system at or above the lowest value or settings established as operating limits in your operation and maintenance plan.

(2) You must operate each baghouse applied to emissions from a metal melting furnace, scrap preheater, pouring area or pouring station subject to an emissions limit for particulate matter in paragraphs (a)(1) through (4) of this section such that the alarm on each bag leak detection system does not activate for more than 5 percent of the total operating time in any semiannual reporting period.

(3) You must operate each wet scrubber applied to emissions from a metal melting furnace, scrap preheater, pouring area or pouring station subject to an emissions limit for particulate matter in paragraphs (a)(1) through (4) of this section such that the 3-hour average pressure drop and scrubber water flowrate does not fall below the minimum levels established during the initial performance test.

(4) You must operate each combustion device applied to emissions from a triethylamine cold box mold or core making line subject to the emissions limit for triethylamine in paragraph (a)(8) of this section, such that the 3-hour average combustion zone temperature does not fall below the minimum level established during the initial performance test.

(5) You must operate each wet acid scrubber applied to emissions from a cold box mold or core making line subject to the emissions limit for triethylamine in paragraph (a)(8) of this section such that:

(i) The 3-hour average scrubbing liquid flowrate does not fall below the minimum level established during the initial performance test; and

(ii) The 3-hour average pH of the scrubber blowdown does not exceed the maximum level established during the initial performance test.

(c) If you use a control device other than a baghouse, wet scrubber, or combustion device, you must prepare and submit a monitoring plan containing the information listed in paragraphs (c)(1) through (5) of this section. The monitoring plan is subject to approval by the Administrator.

(1) A description of the device;

(2) Test results collected in accordance with § 63.7732 verifying the performance of the device for reducing emissions of particulate matter, total gaseous non-methane organics, volatile organic compounds, or triethylamine to the atmosphere to the levels required by this subpart;

(3) A copy of the operation and maintenance plan required by § 63.7710(b);

(4) A list of appropriate operating parameters that will be monitored to maintain continuous compliance with the applicable emissions limitation(s); and

(5) Operating parameter limits based on monitoring data collected during the performance test.

### Work Practice Standards

#### § 63.7700 What work practice standards must I meet?

(a) You must prepare and operate at all times according to a written plan for the selection and inspection of iron and steel scrap to minimize, to the extent practicable, the amount of organics and HAP metals in the charge materials used by the metal casting department. A copy of the plan must be kept onsite and readily available to all plant personnel with purchase, selection, or inspection duties. Each plan must include the information specified in paragraphs (a)(1) through (3) of this section.

(1) Specifications for incoming scrap including, but not limited to, restrictions on the amount of free liquids, grease, oils, painted parts, plastic parts, lead components, and galvanized materials. You must provide each scrap vendor a copy of your specifications.

(2) Procedures for visual inspection of all incoming scrap shipments to ensure the materials meet the specifications.

(i) The inspection procedures must identify the location(s) where inspections are to be performed for each type of shipment. The selected location(s) must provide the best vantage point, considering worker safety, for visual inspection.

(ii) The inspection procedures must include recordkeeping requirements that document each visual inspection and the results.

(iii) The inspection procedures must include provisions for rejecting or returning entire or partial scrap shipments that do not meet specifications and limiting purchases from vendors whose shipments do not meet specifications.

(3) Procedures to ensure that no oily turnings are included in foundry returns used as part of the furnace charge material.

(i) The procedures must include daily visual inspections of the foundry returns to be used as furnace charge.

(ii) The procedures must include recordkeeping requirements to document the daily visual inspection and the results.



(b) For each pouring, cooling, and shakeout line in an existing metal casting department and each pouring area in a new or existing metal casting department, you must manually ignite the gases from each mold vent that do not ignite automatically.

(c) For each mold or core making line in a new or existing mold and core making department, you must use a coating formulation that does not contain HAP as an ingredient of the liquid component of the formulation.

(d) For each furan warm box mold or core making line in a new or existing mold and core making department, you must use a binder chemical formulation that contains no methanol that is specifically a part of the formulation.

(e) For each phenolic urethane cold box or phenolic urethane nobake mold or core making line in a new or existing mold and core making department, you must use a binder chemical formulation in which the solvents are naphthalene-depleted. Depletion of naphthalene must not be accomplished by substitution of naphthalene with other HAP.

(f) For each mold or core making line in a new or existing mold or core making department other than a furan warm box, phenolic urethane cold box, or phenolic urethane nobake mold or core making line, you must:

(1) Conduct a study to evaluate and identify available reduced-HAP binder formulations for each line; and

(2) Adopt reduced-HAP binder formulations for each line unless you demonstrate in your report that all available alternatives are technically or economically infeasible. If you do not adopt a reduced-HAP binder formulation for a line, you must conduct a study to evaluate and identify available reduced-HAP binder formulations every 5 years (at permit renewal).

(g) As provided in § 63.6(g), you may request to use an alternative to the work practice standards in paragraphs (a) through (f) of this section.

### Operation and Maintenance Requirements

#### § 63.7710 What are my operation and maintenance requirements?

(a) As required by § 63.6(e)(1)(i), you must always operate and maintain your affected source, including air pollution control and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by this subpart.

(b) You must prepare and operate at all times according to a written

operation and maintenance plan for each capture and collection system and control device for an emissions source subject to an emissions limit in § 63.7690(a). Each plan must contain the elements described in paragraphs (b)(1) through (3) of this section.

(1) Monthly inspections of the equipment that is important to the performance of the total capture system (*i.e.*, pressure sensors, dampers, and damper switches). This inspection must include observations of the physical appearance of the equipment (*e.g.*, presence of holes in the ductwork or hoods, flow constrictions caused by dents or accumulated dust in the ductwork, and fan erosion). The operation and maintenance plan must also include requirements to repair the defect or deficiency in the capture system before the next scheduled inspection.

(2) Operating limits for each capture system for an emissions source subject to an emissions limit in § 63.7690(a). You must establish the operating limits according to the requirements in paragraphs (b)(2)(i) through (iii) of this section.

(i) Select operating limit parameters appropriate for the capture system design that are representative and reliable indicators of the performance of the capture system. At a minimum, you must use appropriate operating limit parameters that indicate the level of the ventilation draft and damper position settings for the capture system when operating to collect emissions, including revised settings for seasonal variations. Appropriate operating limit parameters for ventilation draft include, but are not limited to; volumetric flowrate through each separately ducted hood, total volumetric flowrate at the inlet to the control device to which the capture system is vented, fan motor amperage, or static pressure. Any parameter for damper position setting may be used that indicates the duct damper position related to the fully open setting.

(ii) For each operating limit parameter selected in paragraph (b)(2)(i) of this section, designate the value or setting for the parameter at which the capture system operates during the process operation. If your operation allows for more than one process to be operating simultaneously, designate the value or setting for the parameter at which the capture system operates during each possible configuration that you may operate (*i.e.*, the operating limits with one furnace melting, two melting, as applicable to your plant).

(iii) Include documentation in your plan to support your selection of the operating limits established for your

capture system. This documentation must include a description of the capture system design, a description of the capture system operating during production, a description of each selected operating limit parameter, a rationale for why you chose the parameter, a description of the method used to monitor the parameter according to the requirements of § 63.7740(a), and the data used to set the value or setting for the parameter for each of your process configurations.

(3) Preventative maintenance plan for each control device, including a preventative maintenance schedule that is consistent with the manufacturer's instructions for routine and long-term maintenance.

(4) A corrective action plan for each baghouse. The plan must include the requirement that, in the event a bag leak detection system alarm is triggered, you must initiate corrective action to determine the cause of the alarm within 1 hour of the alarm, initiate corrective action to correct the cause of the problem within 24 hours of the alarm, and complete the corrective action as soon as practicable. Corrective actions taken may include, but are not limited to:

(i) Inspecting the baghouse for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in emissions.

(ii) Sealing off defective bags or filter media.

(iii) Replacing defective bags or filter media or otherwise repairing the control device.

(iv) Sealing off a defective baghouse compartment.

(v) Cleaning the bag leak detection system probe or otherwise repairing the bag leak detection system.

(vi) Making process changes.

(vii) Shutting down the process producing the particulate matter emissions.

### General Compliance Requirements

#### § 63.7720 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emissions limitations, work practice standards, and operation and maintenance requirements in this subpart at all times, except during periods of startup, shutdown, or malfunction.

(b) During the period between the compliance date specified for your affected source in § 63.7683 and the date upon which continuous monitoring systems have been installed and verified operational and any applicable operating limits have been set, you must

maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(c) You must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

### Initial Compliance Requirements

#### § 63.7730 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) As required by § 63.7(a)(2), you must conduct a performance test within 180 calendar days of the compliance date that is specified in § 63.7683 for your affected source to demonstrate initial compliance with each emissions limitation in § 63.7690 that applies to you.

(b) For each work practice standard in § 63.7700 and each operation and maintenance requirement in § 63.7710 that applies to you where initial compliance is not demonstrated using a performance test, you must demonstrate initial compliance within 30 calendar days after the compliance date that is specified for your affected source in § 63.7683.

(c) If you commenced construction or reconstruction between December 23, 2002 and [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must demonstrate initial compliance with either the proposed emissions limit or the promulgated emissions limit no later than [180 CALENDAR DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] or no later than 180 calendar days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(d) If you commenced construction or reconstruction between December 23, 2002 and [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], and you chose to comply with the proposed emissions limit when demonstrating initial compliance, you must conduct a second performance test to demonstrate compliance with the promulgated emissions limit by [3 YEARS AND 180 CALENDAR DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] or after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

#### § 63.7731 When must I conduct subsequent performance tests?

You must conduct subsequent performance tests to demonstrate compliance with all applicable emissions limitations in § 63.7690 for your affected source no less frequently than every 5 years.

#### § 63.7732 What test methods and other procedures must I use to demonstrate initial compliance with the emissions limitations?

(a) You must conduct each performance test that applies to your affected source according to the requirements in § 63.7(e)(1) and the conditions specified in paragraphs (b) through (d) of this section.

(b) To determine compliance with the applicable emissions limit for particulate matter in § 63.7690(a)(1) through (4) for a metal melting furnace, scrap preheater, pouring station, or pouring area, you must follow the test methods and procedures specified in paragraphs (b)(1) through (6) of this section.

(1) Determine the concentration of particulate matter according to the test methods in appendix A to part 60 of this chapter that are specified in paragraphs (b)(1)(i) through (v) of this section.

(i) Method 1 or 1A to select sampling port locations and the number of traverse points in each stack or duct. Sampling sites must be located at the outlet of the control device (or at the outlet of the emissions source if no control device is present) prior to any releases to the atmosphere.

(ii) Method 2, 2A, 2C, 2D, 2F, or 2G to determine the volumetric flowrate of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 5, 5B, 5D, 5F, or 5I, as applicable, to determine the concentration of particulate matter.

(2) Collect a minimum sample volume of 60 dry standard cubic feet of gas during each particulate matter sampling run. A minimum of three valid test runs are needed to comprise a performance test.

(3) For cupolas, sample only during times when the cupola is on blast.

(4) For electric arc and electric induction furnaces, sample only when metal is being melted.

(5) For scrap preheaters, sample only when scrap is being preheated.

(c) To determine compliance with the emissions limit in § 63.7690(a)(5) for carbon monoxide from a cupola at a new or existing metal casting department, you must follow the procedures in paragraphs (c)(1) through (3) of this section.

(1) Using the continuous emissions monitoring system (CEMS) required in § 63.7740(e), measure and record the concentration of carbon monoxide for 3 consecutive operating hours. Measure emissions at the outlet of the control

device (or at the outlet of the emissions source if no control device is present) prior to any releases to the atmosphere.

(2) Reduce the monitoring data to hourly averages as specified in § 63.8(g)(2).

(3) Compute and record the 3-hour average of the monitoring data.

(d) To determine compliance with the emissions limit in § 63.7690(a)(6) for volatile organic compound emissions from a scrap preheater at a new or existing metal casting department, or in § 63.7690(a)(7) for volatile organic compound emissions from one or more pouring, cooling, and shakeout lines at a new metal casting department, you must follow the procedures specified in paragraphs (d)(1) through (3) of this section.

(1) Measure and record the concentration of volatile organic compound emissions (as propane) using the CEMS in § 63.7740(f) for 3 consecutive operating hours.

(i) If you elect to meet the percent reduction standard for a scrap preheater, you must measure the concentration of emissions at inlet and outlet of the control device (or the inlet and outlet of the emissions source, if no control device is present) prior to any releases to the atmosphere.

(ii) If you elect to meet the concentration limit of 20 ppmv for a scrap preheater or pouring, cooling, and shakeout line, you must measure emissions at the outlet of the control device (or at the outlet of the emissions source if no control device is present) prior to any releases to the atmosphere. For two or more exhaust streams from a pouring, cooling, and shakeout line, compute the flow-weighted average concentration for each combination of exhaust streams using Equation 1 of this section:

$$C_w = \frac{\sum_{i=1}^n C_i Q_i}{\sum_{i=1}^n Q_i} \quad (\text{Eq. 1})$$

Where:

$C_w$  = Flow-weighted concentration, ppmv (as propane);

$C_i$  = Concentration of volatile organic compounds from exhaust stream "i," ppmv (as propane);

$n$  = Number of exhaust streams sampled; and

$Q_i$  = Volumetric flowrate of effluent gas from exhaust stream "i," in dry standard cubic feet per minute.

(2) Reduce the monitoring data to hourly averages as specified in § 63.8(g)(2).

(3) Compute and record the 3-hour average of the monitoring data.

(e) To determine compliance with the limit in § 63.7690(a)(8) for a triethylamine cold box mold or core making line, you must follow the test methods and procedures in 40 CFR part 60, appendix A, specified in paragraphs (e)(1) through (5) of this section.

(1) Method 1 or 1A to select sampling port locations and the number of traverse points in each stack or duct. Sampling sites must be located at the outlet of the control device (or at the outlet of the emissions source if no control device is present) prior to any releases to the atmosphere.

(2) Method 2, 2A, 2C, 2D, 2F, or 2G to determine the volumetric flowrate of the stack gas.

(3) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(4) Method 4 to determine the moisture content of the stack gas.

(5) Method 18 to determine the concentration of triethylamine. The Method 18 sampling option and time must be sufficiently long such that either the triethylamine concentration in the field sample is at least 5 times the limit of detection for the analytical method or the test results calculated using the laboratory's reported analytical detection limit for the specific field samples are less than 1/5 of the applicable emissions limit. In no case shall the sampling time be less than 1 hour.

**§ 63.7733 What procedures must I use to establish operating limits?**

(a) For each capture system subject to operating limits in § 63.7690(b)(1), you must establish site-specific operating limits according to the procedures in paragraphs (a)(1) and (5) of this section.

(2) Concurrent with applicable emissions tests, measure and record values for each of the operating limit parameters in your capture system operation and maintenance plan according to the monitoring requirements in § 63.7740(a).

(3) For any dampers that are manually set and remain at the same position at all times the capture system is operating, the damper position must be visually checked and recorded at the beginning and end of each run.

(4) Review and record the monitoring data. Identify and explain any times the capture system operated outside the applicable operating limits.

(5) Certify in your performance test report that during all test runs, the capture system maintained a minimum face velocity of 200 feet per minute and the values or settings in your capture

system operation and maintenance plan were established.

(b) For each wet scrubber subject to the operating limits in § 63.7690(b)(3) for pressure drop and scrubber water flowrate, you must establish site-specific operating limits according to the procedures specified in paragraphs (b)(1) and (2) of this section.

(1) Using the continuous parameter monitoring systems (CPMS) required in § 63.7740(c), measure and record the pressure drop and scrubber water flowrate in intervals of no more than 15 minutes during each particulate matter test run.

(2) Compute and record the 3-hour average pressure drop and average scrubber water flowrate for each sampling run in which the applicable emissions limit is met.

(c) For each combustion device applied to emissions from a triethylamine cold box mold or core making line subject to the operating limit in § 63.7690(b)(4) for combustion zone temperature, you must establish a site-specific operating limit according to the procedures specified in paragraphs (b)(1) and (2) of this section.

(1) Using the CPMS required in § 63.7740(d), measure and record the combustion zone temperature during each sampling run in intervals of no more than 15 minutes.

(2) Compute and record the 3-hour average combustion zone temperature for each sampling run in which the applicable emissions limit is met.

(d) For each acid wet scrubber subject to the operating limits in § 63.7690(b)(4) for scrubbing liquid flowrate and pH of the scrubber blowdown, you must establish site-specific operating limits according to the procedures specified in paragraphs (d)(1) and (2) of this section.

(1) Using the CPMS required in § 63.7740(e), measure and record the scrubbing liquid flowrate and the scrubber blowdown pH during each triethylamine sampling run in intervals of no more than 15 minutes.

(2) Compute and record the 3-hour average scrubbing liquid flowrate and average scrubber blowdown pH for each sampling run in which the applicable emissions limit is met.

(e) You may change the operating limits for a capture system, wet scrubber, acid wet scrubber, or combustion device if you meet the requirements in paragraphs (e)(1) through (3) of this section.

(1) Submit a written notification to the Administrator of your request to conduct a new performance test to revise the operating limit.

(2) Conduct a performance test to demonstrate compliance with the

applicable emissions limitation in § 63.7690.

(3) Establish revised operating limits according to the applicable procedures in paragraphs (a) through (d) of this section.

**§ 63.7734 How do I demonstrate initial compliance with the emissions limitations that apply to me?**

(a) You have demonstrated initial compliance with the emissions limits in § 63.7690(a) if:

(1) For each metal melting furnace or scrap preheater at an existing metal casting department, the average concentration of particulate matter in the exhaust stream, determined according to the performance test procedures in § 63.7732(b), did not exceed 0.005 gr/dscf;

(2) For each metal melting furnace or scrap preheater at a new metal casting department, the average concentration of particulate matter in the exhaust stream, determined according to the performance test procedures in § 63.7732(b), did not exceed 0.001 gr/dscf;

(3) For each pouring station at an existing metal casting department, the average concentration of particulate matter in the exhaust stream, measured according to the performance test procedures in § 63.7732(b), did not exceed 0.010 gr/dscf;

(4) For each pouring area or pouring station at a new metal casting department, the average concentration of particulate matter in the exhaust stream, measured according to the performance test procedures in § 63.7732(b), did not exceed 0.002 gr/dscf;

(5) For each cupola at a new or existing metal casting department:

(i) You have reduced the data from the CEMS to 3-hour averages according to the performance test procedures in § 63.7732(c); and

(ii) The 3-hour average concentration of carbon monoxide, measured according to the performance test procedures in § 63.7732(c), did not exceed 200 ppmv.

(6) For each scrap preheater at a new or existing metal casting department:

(i) You have reduced the data from the CEMS to 3-hour averages according to the performance test procedures in § 63.7732(d); and

(ii) The 3-hour average concentration of volatile carbon compounds, measured according to the performance test procedures in § 63.7732(d), was reduced by 98 percent, by weight, or did not exceed 20 ppmv as propane.

(7) For each pouring, cooling, and shakeout line at a new metal casting department:

(i) You have reduced the data from the CEMS to 3-hour averages according to the performance test procedures in § 63.7732(d); and

(ii) The 3-hour average concentration of volatile organic compounds from a pouring, cooling, and shakeout line, or the flow-weighted 3-hour average concentration of volatile organic compounds from one or more lines, measured according to the performance test procedures in § 63.7732(d), did not exceed 20 ppmv as propane.

(8) For each triethylamine cold box mold or core making line in a new or existing mold and core making department, the 3-hour average concentration of triethylamine, determined according to the performance test procedures in § 63.7732(e), did not exceed 1 ppmv.

(b) You have demonstrated initial compliance with the operational requirements in § 63.7690(b) if:

(1) For each capture system subject to operating limits in § 63.7690(b)(1), you have demonstrated that the face velocity is greater than 200 feet per minute using the procedures in paragraphs (b)(1)(i) or (ii) of this section, and you have established appropriate site-specific operating limits(s) and have a record of the operating parameter data measured during the performance test in accordance with § 63.7733(a).

(i) Calculate the hood face velocity by measuring the flowrate in the duct and the face area of the hood using the procedures in paragraphs (b)(1)(i)(A) through (D) of this section.

(A) Use Method 1 to select an appropriate sampling port location in the duct leading from the hood to the control device.

(B) Use Method 2 to measure the volumetric flowrate in the duct from the hood to the control device.

(C) Determine the face area of the hood by measuring the open area between the emission source and the hood. If the hood has access doors, the face area shall include the open area for the doors when the doors are in the position they are in during normal operation.

(D) Calculate the face velocity by dividing the volumetric flowrate by the total face area of the hood.

(ii) Measure the face velocity directly using the procedures in paragraphs (b)(1)(ii)(A) through (E) of this section.

(A) Measure the face velocity using a propeller anemometer or equivalent device.

(B) The propeller anemometer shall be made of a material of uniform density and shall be properly balanced to optimize performance.

(C) The measurement range of the anemometer shall extend to at least 1000 feet per minute.

(D) A known relationship shall exist between the anemometer signal output and air velocity, and the anemometer must be equipped with a suitable readout system.

(E) Measure the face velocity by placing the anemometer in the plane of the hood opening. If the hood has access doors, measure the face velocity with the doors in the position they are in during normal operation.

(2) For each wet scrubber subject to the operating limits in § 63.7690(b)(2) for pressure drop and scrubber water flowrate, you have established appropriate site-specific operating limits and have a record of the pressure drop and scrubber water flowrate measured during the performance test in accordance with § 63.7733(b).

(3) For each combustion device subject to the operating limit specified in § 63.7690(b)(3) for combustion zone temperature, you have established appropriate site-specific operating limits and have a record of the combustion zone temperature measured during the performance test in accordance with § 63.7733(c).

(4) For each acid wet scrubber subject to the operating limits in § 63.7690(b)(4) for scrubbing liquid flowrate and scrubber blowdown pH, you have established appropriate site-specific operating limits and have a record of the scrubbing liquid flowrate and pH of the scrubbing liquid blowdown measured during the performance test in accordance with § 63.7733(e).

**§ 63.7735 How do I demonstrate initial compliance with the work practice standards that apply to me?**

(a) For each iron and steel foundry subject to the work practice standard in § 63.7700, you have demonstrated initial compliance if you have certified in your notification of compliance status that:

(1) You have prepared and submitted a written plan for the selection and inspection of iron and steel scrap to the applicable permitting authority for review according to the requirements in § 63.7700(a) and will meet each of the work practice requirements in the plan.

(2) You will meet each of the work practice requirements in paragraphs (a)(2)(i) through (iv) of this section:

(i) For each pouring area and pouring, cooling, and shakeout line subject to the work practice standard in § 63.7700(b), you meet each work practice requirement for ignition of gases;

(ii) For each mold or core coating line subject to the work practice standard in § 63.7700(c), you meet the “no HAP”

requirement for each coating formulation;

(iii) For each furan warm box mold or core making line subject to the work practice standard in § 63.7700(d), you will meet the “no methanol” requirement for each binder chemical formulation; and

(iv) For each phenolic urethane cold box or phenolic urethane nobake mold or core making line subject to the work practice standard in § 63.7700(e), you will meet the “naphthalene-depleted solvent” requirement for each binder chemical formulation.

(3) You have records documenting your certification of compliance, such as a material safety data sheet (provided that it contains appropriate information), a certified product data sheet, or a manufacturer’s hazardous air pollutant data sheet, onsite and available for inspection.

(4) For each mold and core coating line (other than furan warm box, phenolic urethane cold box, or phenolic urethane nobake mold or core making lines) subject to the work practice standard in § 63.7700(f), you have demonstrated initial compliance if:

(i) You have certified in your notification of compliance status that you meet the “reduced-HAP” work practice requirement for each binder chemical formulation or that adoption of the reduced-HAP chemical formulation is technically and/or economically infeasible;

(ii) You have prepared and submitted a written study to the applicable permitting authority for review and approval that evaluates and identifies available reduced-HAP binder formulations for each line. If you do not adopt reduced-HAP binder chemical formulations for a line, your report must demonstrate to the satisfaction of the permitting authority that their use is technically and/or economically infeasible; and

(iii) You have records documenting your certification of compliance, such as a material safety data sheet (provided that it contains appropriate information), a certified product data sheet, or a manufacturer’s hazardous air pollutant data sheet, onsite and available for inspection.

**§ 63.7736 How do I demonstrate initial compliance with the operation and maintenance requirements that apply to me?**

(a) For each capture system subject to an operating limit in § 63.7690(b) established in your operation and maintenance plan, you have demonstrated initial compliance if you

meet the conditions in paragraphs (a)(1) through (3) of this section.

(1) You have certified in your notification of compliance status that:

(i) You have prepared the capture system operation and maintenance plan according to the requirements of § 63.7710(b), including monthly inspection procedures and detailed descriptions of the operating parameter(s) selected to monitor the capture system; and

(ii) You will operate the capture and collection system at the value or settings established in your operation and maintenance plan.

(2) You have certified in your performance test report that the system operated during the test at the operating limits established in your operation and maintenance plan.

(3) You have submitted a notification of compliance status according to the requirements in § 63.7750(e), including a copy of the capture system operation and maintenance plan.

(b) For each control device subject to an operating limit in § 63.7690(b), you have demonstrated initial compliance if you have certified in your notification of compliance status that:

(1) You have prepared the control device operation and maintenance plan according to the requirements of § 63.7710(b); and

(2) You will inspect, operate, and maintain each control device according to the procedures in the plan.

(c) You have submitted a notification of compliance status according to the requirements of § 63.7750(e), including a copy of your operation and maintenance plans for capture systems and control devices.

### Continuous Compliance Requirements

#### § 63.7740 What are my monitoring requirements?

(a) For each capture system subject to an operating limit in § 63.7690(b)(1) established in your capture system operation and maintenance plan, you must install, operate, and maintain a CPMS according to the requirements in § 63.7741(a) and the requirements in paragraphs (a)(1) through (3) of this section.

(1) If you use a flow measurement device to monitor the operating limit parameter, you must at all times monitor the hourly average rate (e.g., the hourly average actual volumetric flowrate through each separately ducted hood or the average hourly total volumetric flowrate at the inlet to the control device).

(2) Dampers that are manually set and remain in the same position are exempt

from the requirement to install and operate a CPMS. If dampers are not manually set and remain in the same position, you must make a visual check at least once every 24 hours to verify that each damper for the capture system is in the same position as during the initial performance test.

(b) For each baghouse subject to the operating limit in § 63.7690(b)(2) for the bag leak detection system alarm, you must at all times monitor the relative change in particulate matter loadings using a bag leak detection system according to the requirements in § 63.7741(b) and conduct inspections at their specified frequencies according to the requirements specified in paragraphs (b)(1) through (8) of this section.

(1) Monitor the pressure drop across each baghouse cell each day to ensure pressure drop is within the normal operating range identified in the manual.

(2) Confirm that dust is being removed from hoppers through weekly visual inspections or other means of ensuring the proper functioning of removal mechanisms.

(3) Check the compressed air supply for pulse-jet baghouses each day.

(4) Monitor cleaning cycles to ensure proper operation using an appropriate methodology.

(5) Check bag cleaning mechanisms for proper functioning through monthly visual inspection or equivalent means.

(6) Make monthly visual checks of bag tension on reverse air and shaker-type baghouses to ensure that bags are not kinked (knead or bent) or lying on their sides. You do not have to make this check for shaker-type baghouses using self-tensioning (spring-loaded) devices.

(7) Confirm the physical integrity of the baghouse through quarterly visual inspections of the baghouse interior for air leaks.

(8) Inspect fans for wear, material buildup, and corrosion through quarterly visual inspections, vibration detectors, or equivalent means.

(c) For each wet scrubber subject to the operating limits in § 63.7690(b)(3), you must at all times monitor the pressure drop and scrubber water flowrate using CPMS according to the requirements in § 63.7741(c).

(d) For each combustion device subject to the operating limit in § 63.7690(b)(4), you must at all times monitor the combustion zone temperature using CPMS according to the requirements in § 63.7741(d).

(e) For each wet acid scrubber subject to the operating limits in § 63.7690(b)(5), you must at all times monitor the scrubbing liquid flowrate

and scrubber blowdown pH using CPMS according to the requirements of § 63.7741(e).

(f) For each cupola at a new or existing metal casting department, you must at all times monitor the concentration of carbon monoxide using a CEMS according to the requirements of § 63.7741(g).

(g) For each scrap preheater at a new or existing metal casting department, and each pouring, cooling, and shakeout line at a new metal casting department, you must at all times monitor the concentration of volatile organic compound emissions using a CEMS according to the requirements of § 63.7741(h).

#### § 63.7741 What are the installation, operation, and maintenance requirements for my monitors?

(a) For each capture system subject to an operating limit in § 63.7690(b), you must install, operate, and maintain each CPMS according to the requirements in paragraphs (a)(1) through (3) of this section.

(1) If you use a flow measurement device to monitor an operating limit parameter for a capture system, you must meet the requirements in paragraphs (a)(1)(i) through (iv) of this section.

(i) Locate the flow sensor and other necessary equipment such as straightening vanes in a position that provides a representative flow and that reduces swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(ii) Use a flow sensor with a minimum measurement sensitivity of 2 percent of the flowrate.

(iii) Conduct a flow sensor calibration check at least semiannually.

(iv) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(2) If you use a pressure measurement device to monitor the operating limit parameter for a capture system, you must meet the requirements in paragraphs (a)(2)(i) through (vi) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure and that minimizes or eliminates pulsating pressure, vibration, and internal and external corrosion.

(ii) Use a gauge with a minimum measurement sensitivity of 0.5 inch of water or a transducer with a minimum measurement sensitivity of 1 percent of the pressure range.

(iii) Check the pressure tap for pluggage daily.

(iv) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(v) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range, or install a new pressure sensor.

(vi) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(3) Record the results of each inspection, calibration, and validation check.

(b) For each baghouse subject to the operating limit specified in § 63.7690(b)(2) for the bag leak detection system alarm, you must install, operate, and maintain each bag leak detection system according to the requirements specified in paragraphs (b)(1) through (7) of this section.

(1) The system must be certified by the manufacturer to be capable of detecting emissions of particulate matter at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(2) The system must provide output of relative changes in particulate matter loadings.

(3) The system must be equipped with an alarm that will sound when an increase in relative particulate loadings is detected over a preset level. The alarm must be located such that it can be heard by the appropriate plant personnel.

(4) Each system that works based on the triboelectric effect must be installed, operated, and maintained in a manner consistent with the guidance document, "Fabric Filter Bag Leak Detection Guidance" (EPA-454/R-98-015, September 1997). This document is available on the EPA's Technology Transfer Network at <http://www.epa.gov/ttn/emc/cem/tribo.pdf> (Adobe Acrobat version) or <http://www.epa.gov/ttn/emc/cem/tribo.wpd> (WordPerfect version). You may install, operate, and maintain other types of bag leak detection systems but you must install, operate, and maintain these systems, in a manner consistent with the manufacturer's written specifications and recommendations and you must also submit a monitoring plan appropriate for these systems.

(5) To make the initial adjustment of the system, establish the baseline output by adjusting the sensitivity (range) and the averaging period of the device. Then, establish the alarm set points and the alarm delay time.

(6) Following the initial adjustment, do not adjust the sensitivity or range, averaging period, alarm set points, or

alarm delay time except as detailed in your operation and maintenance plan. Do not increase the sensitivity by more than 100 percent or decrease the sensitivity by more than 50 percent over a 365-day period unless a responsible official certifies, in writing, that the baghouse has been inspected and found to be in good operating condition.

(7) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(c) For each wet scrubber subject to the operating limits in § 63.7690(b)(3), you must install and maintain CPMS to measure and record the pressure drop across the scrubber and scrubber water flowrate according to the requirements specified in paragraphs (c)(1) and (2) of this section.

(1) For each CPMS for pressure drop, you must:

(i) Locate the pressure sensor in or as close as possible to a position that provides a representative measurement of the pressure drop and that minimizes or eliminates pulsating pressure, vibration, and internal and external corrosion.

(ii) Use a gauge with a minimum measurement sensitivity of 0.5 inch of water or a transducer with a minimum measurement sensitivity of 1 percent of the pressure range.

(iii) Check the pressure tap for pluggage daily.

(iv) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(v) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range, or install a new pressure sensor.

(vi) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(2) For each CPMS for scrubber liquid flowrate, you must:

(i) Locate the flow sensor and other necessary equipment in a position that provides a representative flow and that reduces swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(ii) Use a flow sensor with a minimum measurement sensitivity of 2 percent of the flowrate.

(iii) Conduct a flow sensor calibration check at least semiannually according to the manufacturer's instructions.

(iv) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(d) For each combustion device subject to the operating limit in

§ 63.7690(b)(4), you must install and maintain a CPMS to measure and record the combustion zone temperature according to the requirements in paragraphs (d)(1) through (8) of this section.

(1) Locate the temperature sensor in a position that provides a representative temperature.

(2) For a noncryogenic temperature range, use a temperature sensor with a minimum tolerance of 2.2 °C or 0.75 percent of the temperature value, whichever is larger.

(3) For a cryogenic temperature range, use a temperature sensor with a minimum tolerance of 2.2 °C or 2 percent of the temperature value, whichever is larger.

(4) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(5) If you use a chart recorder, it must have a sensitivity in the minor division of at least 20 °F.

(6) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual. Following the electronic calibration, conduct a temperature sensor validation check, in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 16.7 °C of the process temperature sensor's reading.

(7) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range, or install a new temperature sensor.

(8) At least monthly, inspect all components for integrity and all electrical connections for continuity, oxidation, and galvanic corrosion.

(e) For each acid wet scrubber subject to the operating limits in § 63.7690(b)(5), you must install and maintain CPMS to measure and record the scrubbing liquid flowrate and the scrubber blowdown pH according to the requirements in paragraphs (e)(1) and (2) of this section.

(1) For each CPMS for scrubbing liquid flowrate, you must:

(i) Locate the flow sensor and other necessary equipment in a position that provides a representative flow and that reduces swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(ii) Use a flow sensor with a minimum measurement sensitivity of 2 percent of the flowrate.

(iii) Conduct a flow sensor calibration check at least semiannually according to the manufacturer's instructions.

(iv) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(2) For each CPMS for scrubber blowdown pH, you must:

(i) Locate the pH sensor in a position that provides a representative measurement of the pH and that minimizes or eliminates internal and external corrosion.

(ii) Use a gauge with a minimum measurement sensitivity of 0.1 pH or a transducer with a minimum measurement sensitivity of 5 percent of the pH range.

(iii) Check gauge calibration quarterly and transducer calibration monthly using a manual pH gauge.

(iv) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(f) For each CPMS installed on a capture system, wet scrubber, combustion device, or wet acid scrubber that is subject to the operating limits in § 63.7690(b), you must operate the CPMS according to the requirements specified in paragraphs (f)(1) through (3) of this section.

(1) Each CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of three of the required four data points to constitute a valid hour of data.

(2) Each CPMS must have valid hourly data for 100 percent of every averaging period.

(3) Each CPMS must determine and record the hourly average of all recorded readings and the 3-hour average of all recorded readings.

(g) For each cupola at a new or existing metal casting department, you must install, operate, and maintain a CEMS to measure and record the concentration of carbon monoxide emissions according to the requirements in paragraphs (g)(1) and (2) of this section.

(1) You must install, operate, and maintain each CEMS according to Performance Specification 4 in 40 CFR part 60, appendix B.

(2) You must conduct a performance evaluation of each CEMS according to the requirements in § 63.8 and Performance Specification 4 in 40 CFR part 60, appendix B.

(h) For each scrap preheater at a new or existing metal casting department and each pouring, cooling, and shakeout line at a new metal casting department, you must install, operate, and maintain a CEMS to measure and record the concentration of volatile organic compound emissions according to the

requirements in paragraphs (h)(1) and (2) of this section.

(1) You must install, operate, and maintain each CEMS according to Performance Specification 8 in 40 CFR part 60, appendix B.

(2) You must conduct a performance evaluation of each CEMS according to the requirements of § 63.8 and Performance Specification 8 in 40 CFR part 60, appendix B.

(i) You must operate each CEMS according to the requirements specified in paragraphs (i)(1) through (3) of this section.

(1) As specified in § 63.8(c)(4)(ii), each CEMS must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(2) You must reduce CEMS data as specified in § 63.8(g)(2).

(3) Each CEMS must determine and record the 3-hour average emissions using all the hourly averages collected for periods during which the CEMS is not out-of-control.

(4) Record the results of each inspection, calibration, and validation check.

**§ 63.7742 How do I monitor and collect data to demonstrate continuous compliance?**

(a) Except for monitoring malfunctions, associated repairs, and required quality assurance or control activities (including as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) any time a source of emissions is operating.

(b) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emissions or operating levels or to fulfill a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing compliance.

(c) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

**§ 63.7743 How do I demonstrate continuous compliance with the emissions limitations that apply to me?**

(a) For each new or existing affected source, you must demonstrate continuous compliance by:

(1) Maintaining the average concentration of particulate matter from

a metal melting furnace or scrap preheater at an existing metal casting department in a concentration at or below 0.005 gr/dscf;

(2) Maintaining the average concentration of particulate matter from a metal melting furnace or scrap preheater at a new metal casting department in a concentration at or below 0.001 gr/dscf;

(3) Maintaining the average concentration of particulate matter from a pouring station at an existing metal casting department in a concentration at or below 0.010 gr/dscf;

(4) Maintaining the average concentration of particulate matter from a pouring station at a new metal casting department in a concentration at or below 0.002 gr/dscf;

(5) Maintaining the 3-hour average concentration of carbon monoxide emissions from a coupla at a new or existing metal casting department in a concentration at or below 200 ppmv and:

(i) Inspecting and maintaining each CEMS according to the requirements of § 63.7741(g) and recording all information needed to document conformance with these requirements; and

(ii) Collecting and reducing monitoring data according to the requirements of § 63.7741(i) and recording all information needed to document conformance with these requirements.

(6) Maintaining a 98 percent reduction in the 3-hour average concentration of volatile organic compounds from a scrap preheater at a new or existing metal casting department or the 3-hour average in a concentration at or below 20 ppmv as propane and:

(i) Inspecting and maintaining each CEMS according to the requirements of § 63.7741(h) and recording all information needed to document conformance with these requirements; and

(ii) Collecting and reducing monitoring data for according to the requirements of § 63.7741(i) and recording all information needed to document conformance with these requirements.

(7) Maintaining a 98 percent reduction in the 3-hour average concentration of volatile organic compounds from one or more pouring, cooling, and shakeout lines at a new metal casting department or maintaining the 3-hour, flow-weighted average concentration of volatile organic compounds from one or more pouring, cooling, and shakeout lines at a new metal casting department in a

concentration at or below 20 ppmv as propane:

(i) Inspecting and maintaining each CEMS according to the requirements of § 63.7741(h) and recording all information needed to document conformance with these requirements; and

(ii) Collecting and reducing monitoring data according to the requirements of § 63.7741(i) and recording all information needed to document conformance with these requirements.

(8) Maintaining the average concentration of triethylamine from a triethylamine cold box mold or core making line at a new or existing mold and core making department in a concentration at or below 1 ppmv.

(9) Conducting subsequent performance tests at least every 5 years for each emissions source subject to an emissions limitation in § 63.7690(a).

(b) You must demonstrate continuous compliance for each capture system subject to an operating limit in § 63.7690(b)(1) by meeting the requirements in paragraphs (b)(1) and (2) of this section.

(1) Operate the capture system at or above the lowest values or settings established for the operating limits in your operation and maintenance plan; and

(2) Monitor the capture system according to the requirements in § 63.7740(a) and collect, reduce, and record the monitoring data for each of the operating limit parameters according to the applicable requirements in this subpart.

(b) For each baghouse subject to the operating limit in § 63.7690(b)(2) for the bag leak detection system alarm, you must demonstrate continuous compliance by completing the requirements in paragraphs (b)(1) through (3) of this section:

(1) Maintaining each baghouse such that the bag leak detection system alarm does not sound for more than 5 percent of the operating time during any semiannual reporting period. Follow the procedures specified in paragraphs (b)(1)(i) through (v) of this section to determine the percent of time the alarm sounded.

(i) Alarms that occur due solely to a malfunction of the bag leak detection system are not included in the calculation.

(ii) Alarms that occur during startup, shutdown, or malfunction are not included in the calculation if the condition is described in the startup, shutdown, and malfunction plan and all the actions you took during the startup, shutdown, or malfunction were

consistent with the procedures in the startup, shutdown, and malfunction plan.

(iii) Count 1 hour of alarm time for each alarm when you initiated procedures to determine the cause of the alarm within 1 hour.

(iv) Count the actual amount of time you took to initiate procedures to determine the cause of the alarm if you did not initiate procedures to determine the cause of the alarm within 1 hour of the alarm.

(v) Calculate the percentage of time the alarm on the bag leak detection system sounds as the ratio of the sum of alarm times to the total operating time multiplied by 100.

(2) Maintaining records of the times the bag leak detection system alarm sounded, and for each valid alarm, the time you initiated corrective action, the corrective action taken, and the date on which corrective action was completed; and

(3) Inspecting and maintaining each baghouse according to the requirements of § 63.7740(b)(1) through (8) and recording all information needed to document conformance with these requirements. If you increase or decrease the sensitivity of the bag leak detection system beyond the limit in § 63.7741(b)(1), you must include a copy of the required written certification by a semiannual compliance report.

(c) For each wet scrubber that is subject to the operating limits in § 63.7690(b)(3), you must demonstrate continuous compliance by:

(1) Maintaining the 3-hour average pressure drop and 3-hour average scrubber water flowrate at levels no lower than those established during the initial or subsequent performance test;

(2) Inspecting and maintaining each CPMS according to the requirements of § 63.7741(c) and recording all information needed to document conformance with these requirements; and

(3) Collecting and reducing monitoring data for pressure drop and scrubber water flowrate according to the requirements of § 63.7741(f) and recording all information needed to document conformance with these requirements.

(d) For each combustion device that is subject to the operating limit in § 63.7690(b)(4), you must demonstrate continuous compliance by:

(1) Maintaining the 3-hour average combustion zone temperature at a level no lower than that established during the initial or subsequent performance test;

(2) Inspecting and maintaining each CPMS according to the requirements of

§ 63.7741(d) and recording all information needed to document conformance with these requirements; and

(3) Collecting and reducing monitoring data for combustion zone temperature according to the requirements of § 63.7741(f) and recording all information needed to document conformance with these requirements.

(e) For each acid wet scrubber subject to the operating limits in § 63.7690(b)(5), you must demonstrate continuous compliance by:

(1) Maintaining the 3-hour average scrubbing liquid flowrate at a level no lower than the level established during the initial or subsequent performance test;

(2) Maintaining the 3-hour average scrubber blowdown pH at a level no higher than the level established during the initial or subsequent performance test;

(3) Inspecting and maintaining each CPMS according to the requirements of § 63.7741(e) and recording all information needed to document conformance with these requirements; and

(4) Collecting and reducing monitoring data for scrubbing liquid flowrate and scrubber blowdown pH according to the requirements of § 63.7741(f) and recording all information needed to document conformance with these requirements.

#### **§ 63.7744 How do I demonstrate continuous compliance with the work practice standards that apply to me?**

(a) For each iron and steel foundry subject to the work practice standards in § 63.7700(a), you must demonstrate continuous compliance by maintaining records documenting conformance with the procedures in your scrap selection and inspection plan.

(b) For each pouring area in a new or existing metal casting department and each pouring, cooling, and shakeout line in an existing metal casting department subject to the work practice standard in § 63.7700(b), you must demonstrate continuous compliance by:

(1) Visually inspecting each line at least once every shift to verify that the gases have ignited automatically and record the results of each inspection;

(2) Manually igniting the gases from each mold vent that do not ignite automatically and recording that manual ignition was done.

(c) For each new or existing mold and core making department you must:

(1) Maintain records of the chemical composition of all coating formulations applied in each mold or core coating



line to demonstrate compliance with the requirement of § 63.7700(c);

(2) Maintain records of the chemical composition of all binder formulations applied in each furan warm box mold or core making line to demonstrate compliance with the requirement of § 63.7700(d);

(3) Maintain records of the chemical composition of all binder formulations applied in each phenolic urethane cold box and each phenolic urethane nobake mold or core making line to demonstrate compliance with the requirement of § 63.7700(e);

(4) Maintain records of the chemical composition of all binder formulations applied in each mold or core making line (other than furan warm box, phenolic urethane cold box, and phenolic urethane nobake mold or core making lines) to demonstrate compliance with the requirement of § 63.7700(f). If you do not adopt reduced-HAP binder formulations for a line, you must conduct a study to evaluate and identify available formulations as described in § 63.7700(g) every 5 years; and

(5) If you change the formulation of any coating or binder chemical used in the mold and core coating and mold and core making lines subject to the requirements of § 63.7700(b) through (f), notify us in your next compliance report and recertify compliance with the applicable work practice standard.

**§ 63.7745 How do I demonstrate continuous compliance with the operation and maintenance requirements that apply to me?**

(a) For each capture system and control device for an emissions source subject to an emissions limit in § 63.7690(a), you must demonstrate continuous compliance with the operation and maintenance requirements of § 63.7710 by:

(1) Making monthly inspections of capture systems and initiating corrective action according to § 63.7710(b)(1) and recording all information needed to document conformance with these requirements;

(2) Performing preventative maintenance for each control device according to the preventative maintenance plan required by § 63.7710(b)(3) and recording all information needed to document conformance with these requirements; and

(3) Initiating and completing corrective action for a bag leak detection system alarm according to the corrective action plan required by § 63.7710(b)(4) and recording all information needed to

document conformance with these requirements.

(b) You must maintain a current copy of the operation and maintenance plans required by § 63.7710(b) onsite and available for inspection upon request. You must keep the plans for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

**§ 63.7746 What other requirements must I meet to demonstrate continuous compliance?**

(a) *Deviations.* You must report each instance in which you did not meet each emissions limitation in § 63.7690 (including each operating limit) that applies to you. This requirement includes periods of startup, shutdown, and malfunction. You also must report each instance in which you did not meet each work practice standard in § 63.7700 and each operation and maintenance requirement of § 63.7710 that applies to you. These instances are deviations from the emissions limitations, work practice standards, and operation and maintenance requirements in this subpart. These deviations must be reported according to the requirements of § 63.7751.

(b) *Startups, shutdowns, and malfunctions.* During periods of startup, shutdown, and malfunction, you must operate in accordance with your startup, shutdown, and malfunction plan.

(1) Consistent with the requirements of §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan.

(2) The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations according to the provisions in § 63.6(e).

**Notifications, Reports, and Records**

**§ 63.7750 What notifications must I submit and when?**

(a) You must submit all of the notifications required by §§ 63.7(b) and (c); 63.8(e); 63.8(f)(4) and (6); 63.9(b) through (e), and (g) through (h) that apply to you by the specified dates.

(b) As specified in § 63.9(b)(2), if you startup your affected source before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit your initial notification no later than [20 CALENDAR DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) As specified in § 63.9(b)(3), if you start your new affected source on or after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit your initial notification no later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required by § 63.7(b)(1).

(e) If you are required to conduct a performance test or other initial compliance demonstration, you must submit a notification of compliance status according to the requirements of § 63.9(h)(2)(ii).

(1) For each initial compliance demonstration that does not include a performance test, you must submit the notification of compliance status before the close of business on the 30th calendar day following completion of the initial compliance demonstration.

(2) For each initial compliance demonstration that does include a performance test, you must submit the notification of compliance status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to the requirement specified in § 63.10(d)(2).

**§ 63.7751 What reports must I submit and when?**

(a) *Compliance report due dates.* Unless the Administrator has approved a different schedule, you must submit a semiannual compliance report to your permitting authority according to the requirements specified in paragraphs (a)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source by § 63.7683 and ending on June 30 or December 31, whichever date comes first after the compliance date that is specified for your affected source.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after your first compliance report is due.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31,

whichever date comes first after the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of the dates specified in paragraphs (a)(1) through (4) of this section.

(b) *Compliance report contents.* Each compliance report must include the information specified in paragraphs (b)(1) through (3) of this section and, as applicable, paragraphs (b)(4) through (8) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took action consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there were no deviations from any emissions limitations (including operating limit), work practice standards, or operation and maintenance requirements, a statement that there were no deviations from the emissions limitations, work practice standards, or operation and maintenance requirements during the reporting period.

(6) If there were no periods during which a continuous monitoring system (including a CPMS or CEMS) was out-of-control as specified by § 63.8(c)(7), a statement that there were no periods during which the CPMS was out-of-control during the reporting period.

(7) For each deviation from an emissions limitation (including an operating limit) that occurs at an affected source for which you are not using a continuous monitoring system (including a CPMS or CEMS) to comply with an emissions limitation or work practice standard required in this subpart, the compliance report must contain the information specified in paragraphs (b)(1) through (4) and (b)(7)(i) and (ii) of this section. This requirement includes periods of startup, shutdown, and malfunction.

(i) The total operating time of each affected source during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause) as applicable and the corrective action taken.

(8) For each deviation from an emissions limitation (including an operating limit) or work practice standard occurring at an affected source where you are using a continuous monitoring system (including a CPMS or CEMS) to comply with the emissions limitation or work practice standard in this subpart, you must include the information specified in paragraphs (b)(1) through (4) and (b)(8)(i) through (xi) of this section. This requirement includes periods of startup, shutdown, and malfunction.

(i) The date and time that each malfunction started and stopped.

(ii) The date and time that each continuous monitoring system was inoperative, except for zero (low-level) and high-level checks.

(iii) The date, time, and duration that each continuous monitoring system was out-of-control, including the information in § 63.8(c)(8).

(iv) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(v) A summary of the total duration of the deviations during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(vi) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and unknown causes.

(vii) A summary of the total duration of continuous monitoring system downtime during the reporting period and the total duration of continuous monitoring system downtime as a percent of the total source operating time during the reporting period.

(viii) A brief description of the process units.

(ix) A brief description of the continuous monitoring system.

(x) The date of the latest continuous monitoring system certification or audit.

(xi) A description of any changes in continuous monitoring systems, processes, or controls since the last reporting period.

(c) *Immediate startup, shutdown, and malfunction report.* If you had a startup, shutdown, or malfunction during the semiannual reporting period that was

not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown, and malfunction report according to the requirements of § 63.10(d)(5)(ii).

(d) *Part 70 monitoring report.* If you have obtained a title V operating permit for an affected source pursuant to 40 CFR part 70 or part 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a compliance report for an affected source along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all the required information concerning deviations from any emissions limitation or operation and maintenance requirement in this subpart, submission of the compliance report satisfies any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report does not otherwise affect any obligation you may have to report deviations from permit requirements for an affected source to your permitting authority.

#### **§ 63.7752 What records must I keep?**

(a) You must keep the records specified in paragraphs (a)(1) through (3) of this section:

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any initial notification or notification of compliance status that you submitted, according to the requirements of § 63.10(b)(2)(xiv).

(2) The records specified in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests and performance evaluations as required by § 63.10(b)(2)(viii).

(b) You must keep the following records for each CEMS.

(1) Records described in § 63.10(b)(2)(vi) through (xi).

(2) Previous (*i.e.*, superseded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(3) Request for alternatives to relative accuracy tests for CEMS as required in § 63.8(f)(6)(i).

(4) Records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(c) You must keep the records required by §§ 63.7743, 63.7744, and 63.7745 to show continuous compliance

with each emissions limitation, work practice standard, and operation and maintenance requirement that applies to you.

**§ 63.7753 In what form and for how long must I keep my records?**

(a) You must keep your records in a form suitable and readily available for expeditious review, according to the requirements of § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record according to the requirements in § 63.10(b)(1). You can keep the records for the previous 3 years off site.

**Other Requirements and Information**

**§ 63.7760 What parts of the General Provisions apply to me?**

Table 1 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

**§ 63.7761 Who implements and enforces this subpart?**

(a) This subpart can be implemented and enforced by us, the U.S. Environmental Protection Agency (EPA), or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to work practice standards under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

**§ 63.7762 What definitions apply to this subpart?**

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section.

*Bag leak detection system* means a system that is capable of continuously monitoring relative particulate matter (dust) loadings in the exhaust of a baghouse to detect bag leaks and other upset conditions. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, electrodynamic, light scattering, light transmittance, or other effect to continuously monitor relative particulate matter loadings.

*Binder chemical* means a component of a system of chemicals used to bind sand together into molds, mold sections, and cores through chemical reaction as opposed to pressure.

*Capture system* means the collection of components used to capture gases and fumes released from one or more emissions points and then convey the captured gas stream to a control device. A *capture system* may include, but is not limited to, the following

components as applicable to a given capture system design: duct intake devices, hoods, enclosures, ductwork, dampers, manifolds, plenums, and fans.

*Cold box mold or core making line* means a mold or core making line in which the formed aggregate is hardened by catalysis with a gas.

*Combustion device* means an afterburner, thermal incinerator, or scrap preheater.

*Cooling* means the process of molten metal solidification within the mold and subsequent temperature reduction prior to shakeout.

*Cupola* means a vertical cylindrical shaft furnace that uses coke and forms of iron and steel such as scrap and foundry returns as the primary charge components and melts the iron and steel through combustion of the coke by a forced upward flow of heated air.

*Deviation* means any instance in which an affected source or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emissions limitation (including operating limits), work practice standard, or operation and maintenance requirement;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating

permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emissions limitation (including operating limits) or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

*Electric arc furnace* means a vessel in which forms of iron and steel such as scrap and foundry returns are melted through resistance heating by an electric current flowing through the arcs formed between the electrodes and the surface of the metal and also flowing through the metal between the arc paths.

*Electric induction furnace* means a vessel in which forms of iron and steel such as scrap and foundry returns are melted through resistance heating by an electric current that is induced in the metal by passing an alternating current through a coil surrounding the metal charge or surrounding a pool of molten metal at the bottom of the vessel.

*Emissions limitation* means any emissions limit or operating limit.

*Exhaust stream* means gases emitted from a process that by design are captured, conveyed through ductwork, and exhausted from the foundry building through a stack using forced ventilation.

*Furan warm box mold or core making line* means a mold or core making line in which the binder chemical system used is that system commonly designated furan warm box system by the foundry industry.

*Hazardous air pollutant* means any substance on the list originally established in 112(d)(1) of the Clean Air Act and subsequently amended as published in the Code of Federal Regulations.

*Iron and steel foundry* means a facility that melts scrap, ingot, and/or other forms of iron and/or steel and pours the resulting molten metal into molds to produce near final shape products.

*Metal casting department* means the area of a foundry and associated equipment in which all operations needed to melt metal and produce mechanically finished castings are done, including preparation of furnace feed, melting metal, transferring molten metal to pouring stations, pouring metal into molds, cooling molds, and separating castings from molds.

*Metal melting furnace* means a cupola, electric arc furnace, or electric induction furnace that converts scrap, foundry returns, and/or other solid forms of iron and/or steel to a liquid state. This definition does not include a holding furnace, which is a furnace that

receives metal already in the molten state.

*Mold and core making department* means the area of a foundry and associated equipment in which all operations needed to produce molds, mold sections, and cores are done, including those operations performed in mold or core making and mold or core coating lines.

*Mold or core coating line* means the collection of equipment that is used to prepare slurry or other forms of coating materials that contain finely divided refractory substances, coat molds or cores with the slurry, and dry the coating.

*Mold or core making line* means the collection of equipment that is used to mix an aggregate of sand and binder chemicals, form the aggregate into final shape, and harden the formed aggregate. This definition does not include a line for making green sand molds or cores.

*Mold vent* means an opening in a mold through which gases containing pyrolysis products of organic mold and core constituents produced by contact with or proximity to molten metal normally escape the mold during and after metal pouring.

*Naphthalene-depleted solvent* means a petroleum distillate product or similar product used in sand binder chemical formulations that contains 3 percent or less naphthalene by weight.

*Phenolic urethane cold box mold or core making line* means a cold box mold or core making line in which the binder chemical system used is that system commonly termed phenolic urethane system by the foundry industry. This system typically uses triethylamine or dimethylethylamine as the catalyst gas.

*Phenolic urethane nobake mold or core making line* means a mold or core making line in which the binder chemical system used is that system commonly designated phenolic urethane nobake system by the foundry industry.

*Pouring area* means an area in which molten metal is brought to molds that remain stationary from the time they receive the molten metal through cooling.

*Pouring, cooling, and shakeout line* means the combination of either a pouring station and its associated cooling area or a pouring area with the area in which shakeout is done.

*Pouring station* means the fixed location to which molds are brought in

a continuous or semicontinuous manner to receive molten metal, after which the molds are moved to a cooling area.

*Responsible official* means responsible official as defined in § 63.2.

*Scrap preheater* means a vessel or other piece of equipment in which metal scrap that is to be used as melting furnace feed is heated to a temperature high enough to eliminate moisture and other volatile impurities or tramp materials by direct flame heating or similar means of heating.

*Scrubber blowdown* means liquor or slurry discharged from a wet scrubber that is either removed as a waste stream or processed to remove impurities or adjust its composition or pH before being returned to the scrubber.

*Shakeout* means the process of separating a casting from a mold using a mechanical unit or manual procedure designed for and dedicated to this purpose.

*Work practice standard* means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the CAA.

**Tables to Subpart EEEEE of Part 63**

**TABLE 1 TO SUBPART EEEEE OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEEE**

[As stated in § 63.7760, you must meet each requirement in the following table that applies to you]

Citation	Subject	Applies to subpart EEEEE?	Explanation
63.1	Applicability	Yes	
63.2	Definitions	Yes	
63.3	Units and abbreviations	Yes	
63.4	Prohibited activities	Yes	
63.5	Construction/reconstruction	Yes	
63.6(a)–(g)	Compliance with standards and maintenance requirements.	Yes	
63.6(h)	Opacity and visible emission standards.	No	Subpart EEEEE has no opacity or visible emissions standards and does not require COMS.
63.6(i)(i)–(j)	Compliance extension and Presidential compliance exemption.	Yes	
63.7(a)(3), (b)–(h)	Performance testing requirements	Yes	
63.7(a)(1)–(a)(2)	Applicability and performance test dates.	No	Subpart EEEEE specifies applicability and performance test dates.
63.8(a)(1)–(a)(3), (b), (c)(1)–(c)(3), (c)(6)–(c)(8), (d), (e), (f)(1)–(f)(6), (g)(1)–(g)(4).	Monitoring requirement	Yes	
63.8(a)(4)	Additional monitoring requirements for control devices in § 63.11.	No	Subpart EEEEE does not require flares.
63.8(c)(4)	Continuous monitoring system requirements.	No	Subpart EEEEE specifies requirements for operation of CMS and CEMS.
63.8(c)(5)	COMS Minimum Procedures	No	Subpart EEEEE does not require COMS.
63.8(g)(5)	Data reduction	No	Subpart EEEEE specifies data reduction requirements.
63.9	Notification requirements	Yes	
63.10(a), (b)(1), (b)(2)(xii)–(b)(2)(xiv), (b)(3), (c)(1)–(6), (c)(9)–(15), (d)(1)–(2), (e)(1)–(2), (f).	Recordkeeping and reporting requirements.	Yes	Additional records for CMS in § 63.10(c)(1)–(6), (9)–(15) apply only to CEMS.
63.10(c)(7)–(8)	Records of excess emissions and parameter monitoring exceedances for CMS.	No	Subpart EEEEE specifies records requirements.

TABLE 1 TO SUBPART EEEEE OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEEE—Continued  
 [As stated in § 63.7760, you must meet each requirement in the following table that applies to you]

Citation	Subject	Applies to subpart EEEEE?	Explanation
63.10(d)(3) .....	Reporting opacity or visible emission observations.	No .....	Subpart EEEEE does not include opacity or visible emissions limits. Subpart EEEEE specifies reporting requirements. Subpart EEEEE does not require COMS. Subpart EEEEE does not require flares.
63.10(e)(3) .....	Excess emission reports .....	No .....	
63.10(e)(4) .....	Reporting COMS data .....	No .....	
63.11 .....	Control device requirements .....	No .....	
63.12 .....	State authority and delegations .....	Yes .....	
63.13–63.15 .....	Addresses of State air pollution control agencies and EPA regional offices. Incorporation by reference. Availability of information and confidentiality.	Yes .....	

[FR Doc. 02–31234 Filed 12–20–02; 8:45 am]

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# Federal Register

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**Monday,  
December 23, 2002**

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**Part III**

## **The President**

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**Executive Order 13281—Half-Day Closing  
of Executive Departments and Agencies  
of the Federal Government on Tuesday,  
December 24, 2002**



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**Presidential Documents**

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Title 3—

Executive Order 13281 of December 19, 2002

The President

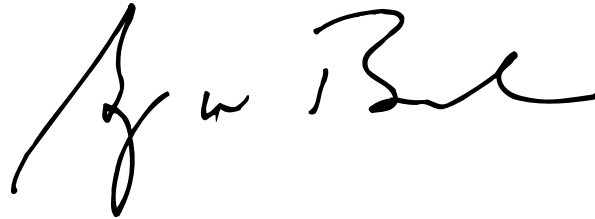
**Half-Day Closing of Executive Departments and Agencies of the Federal Government on Tuesday, December 24, 2002**

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

**Section 1.** All executive branch departments and agencies of the Federal Government shall be closed and their employees excused from duty for the last half of the scheduled workday on Tuesday, December 24, 2002, the day before Christmas Day, except as provided in section 2 below.

**Sec. 2.** The heads of executive branch departments and agencies may determine that certain offices and installations of their organizations, or parts thereof, must remain open and that certain employees must report for duty for the full scheduled workday on December 24, 2002, for reasons of national security or defense or other public reasons.

**Sec. 3.** Tuesday, December 24, 2002, shall be considered as falling within the scope of Executive Order 11582 of February 11, 1971, and of 5 U.S.C. 5546 and 6103(b) and other similar statutes insofar as they relate to the pay and leave of employees of the United States.



THE WHITE HOUSE,  
*December 19, 2002.*



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California; published 11-21-02

Oranges, grapefruit, tangerines, and tangelos grown in—

Florida; published 11-21-02

Prunes (dried) produced in—

California; published 11-21-02

**AGRICULTURE DEPARTMENT****Farm Service Agency**

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**AGRICULTURE DEPARTMENT****Rural Business-Cooperative Service**

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Business and industry loans; rural area definition revision; published 12-23-02

**AGRICULTURE DEPARTMENT****Rural Housing Service**

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Business and industry loans; rural area definition revision; published 12-23-02

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General records schedule; published 11-22-02

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Northeastern United States fisheries—  
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Blackburn's sphinx moth; comments due by 12-30-02; published 10-10-02 [FR 02-25722]

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Hartzell Propeller, Inc.; comments due by 1-3-03; published 11-4-02 [FR 02-27739]

Honeywell; comments due by 12-31-02; published 11-1-02 [FR 02-27433]

McDonnell Douglas; comments due by 1-2-03; published 11-18-02 [FR 02-29118]

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Red Hills, Lake County, CA; comments due by 12-30-02; published 10-30-02 [FR 02-27443]

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**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 "PLU S" (Public Laws Update Service) on 202-741-6043. This list is also available online at <http://www.nara.gov/fedreg/plawcurr.html>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.access.gpo.gov/nara/nara005.html>. Some laws may not yet be available.

**H.R. 2818/P.L. 107-361**

To authorize the Secretary of the Interior to convey certain public land within the Sand Mountain Wilderness Study Area in the State of Idaho to resolve an occupancy encroachment dating back to 1971. (Dec. 17, 2002; 116 Stat. 3020)

**Last List December 19, 2002**

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Title	Stock Number	Price	Revision Date
<b>1, 2 (2 Reserved)</b>	(869-048-00001-1)	9.00	Jan. 1, 2002
<b>3 (1997 Compilation and Parts 100 and 101)</b>	(869-048-00002-0)	59.00	1 Jan. 1, 2002
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700-End	(869-048-00111-5)	56.00	July 1, 2002	9		13.00	<sup>3</sup> July 1, 1984
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1-299	(869-048-00123-9)	45.00	July 1, 2002	1-199	(869-048-00172-7)	57.00	Oct. 1, 2002
300-399	(869-048-00124-7)	43.00	July 1, 2002	200-499	(869-048-00173-5)	31.00	<sup>9</sup> Oct. 1, 2002
400-End	(869-048-00125-5)	59.00	July 1, 2002	500-1199	(869-044-00174-8)	45.00	Oct. 1, 2001
<b>35</b>	(869-048-00126-3)	10.00	<sup>7</sup> July 1, 2002	1200-End	(869-048-00175-1)	57.00	Oct. 1, 2002
<b>36 Parts:</b>				<b>46 Parts:</b>			
1-199	(869-048-00127-1)	36.00	July 1, 2002	1-40	(869-048-00176-0)	44.00	Oct. 1, 2002
200-299	(869-048-00128-0)	35.00	July 1, 2002	41-69	(869-048-00177-8)	37.00	Oct. 1, 2002
300-End	(869-048-00129-8)	58.00	July 1, 2002	70-89	(869-048-00178-6)	14.00	Oct. 1, 2002
<b>37</b>	(869-048-00130-1)	47.00	July 1, 2002	90-139	(869-044-00179-9)	41.00	Oct. 1, 2001
<b>38 Parts:</b>				140-155	(869-048-00180-8)	24.00	<sup>9</sup> Oct. 1, 2002
0-17	(869-048-00131-0)	57.00	July 1, 2002	156-165	(869-048-00181-6)	31.00	<sup>9</sup> Oct. 1, 2002
18-End	(869-048-00132-8)	58.00	July 1, 2002	166-199	(869-044-00182-9)	42.00	Oct. 1, 2001
<b>39</b>	(869-048-00133-6)	40.00	July 1, 2002	200-499	(869-044-00183-7)	36.00	Oct. 1, 2001
<b>40 Parts:</b>				500-End	(869-048-00184-1)	24.00	Oct. 1, 2002
1-49	(869-048-00134-4)	57.00	July 1, 2002	<b>47 Parts:</b>			
50-51	(869-048-00135-2)	40.00	July 1, 2002	0-19	(869-044-00185-3)	55.00	Oct. 1, 2001
52 (52.01-52.1018)	(869-048-00136-1)	55.00	July 1, 2002	*20-39	(869-048-00186-7)	45.00	Oct. 1, 2002
52 (52.1019-End)	(869-048-00137-9)	58.00	July 1, 2002	40-69	(869-044-00187-0)	36.00	Oct. 1, 2001
53-59	(869-048-00138-7)	29.00	July 1, 2002	70-79	(869-044-00188-8)	58.00	Oct. 1, 2001
60 (60.1-End)	(869-048-00139-5)	56.00	July 1, 2002	80-End	(869-044-00189-6)	55.00	Oct. 1, 2001
60 (Apps)	(869-048-00140-9)	51.00	<sup>8</sup> July 1, 2002	<b>48 Chapters:</b>			
61-62	(869-048-00141-7)	38.00	July 1, 2002	1 (Parts 1-51)	(869-044-00190-0)	60.00	Oct. 1, 2001
63 (63.1-63.599)	(869-048-00142-5)	56.00	July 1, 2002	1 (Parts 52-99)	(869-044-00191-8)	45.00	Oct. 1, 2001
63 (63.600-63.1199)	(869-048-00143-3)	46.00	July 1, 2002	*2 (Parts 201-299)	(869-048-00192-1)	53.00	Oct. 1, 2002
63 (63.1200-End)	(869-048-00144-1)	61.00	July 1, 2002	3-6	(869-048-00193-0)	30.00	Oct. 1, 2002
64-71	(869-048-00145-0)	29.00	July 1, 2002	7-14	(869-044-00194-2)	51.00	Oct. 1, 2001
72-80	(869-048-00146-8)	59.00	July 1, 2002	15-28	(869-044-00195-1)	53.00	Oct. 1, 2001
81-85	(869-048-00147-6)	47.00	July 1, 2002	29-End	(869-048-00196-4)	38.00	<sup>9</sup> Oct. 1, 2002
86 (86.1-86.599-99)	(869-048-00148-4)	52.00	<sup>8</sup> July 1, 2002	<b>49 Parts:</b>			
86 (86.600-1-End)	(869-048-00149-2)	47.00	July 1, 2002	1-99	(869-044-00197-7)	55.00	Oct. 1, 2001
87-99	(869-048-00150-6)	57.00	July 1, 2002	100-185	(869-044-00198-5)	60.00	Oct. 1, 2001
				*186-199	(869-048-00199-9)	18.00	Oct. 1, 2002
				200-399	(869-044-00200-1)	60.00	Oct. 1, 2001
				400-999	(869-044-00201-9)	58.00	Oct. 1, 2001
				1000-1199	(869-048-00202-2)	25.00	Oct. 1, 2002

Title	Stock Number	Price	Revision Date
*1200-End .....	(869-048-00203-1) .....	30.00	Oct. 1, 2002
<b>50 Parts:</b>			
1-199 .....	(869-044-00204-3) .....	63.00	Oct. 1, 2001
200-599 .....	(869-044-00205-1) .....	36.00	Oct. 1, 2001
600-End .....	(869-044-00206-0) .....	55.00	Oct. 1, 2001
CFR Index and Findings			
Aids .....	(869-048-00047-0) .....	59.00	Jan. 1, 2002
Complete 2001 CFR set .....		1,195.00	2001
Microfiche CFR Edition:			
Subscription (mailed as issued) .....		298.00	2000
Individual copies .....		2.00	2000
Complete set (one-time mailing) .....		290.00	2000
Complete set (one-time mailing) .....		247.00	1999

<sup>1</sup> Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

<sup>2</sup> The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

<sup>3</sup> The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

<sup>4</sup> No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

<sup>5</sup> No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

<sup>6</sup> No amendments to this volume were promulgated during the period April 1, 2001, through April 1, 2002. The CFR volume issued as of April 1, 2001 should be retained.

<sup>7</sup> No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

<sup>8</sup> No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.

<sup>9</sup> No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2002. The CFR volume issued as of October 1, 2001 should be retained.