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Federal Register

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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

Agricultural Marketing Service

7 CFR Part 1007

Milk in the Southeast Marketing Area

CFR Correction

In Title 7 of the Code of Federal Regulations, parts 1000 to 1199, revised as of January 1, 2001, in § 1007.7, paragraph (c) is revised to read as follows:

§ 1007.7 Pool plant.

* * * * *

(c) A supply plant from which 50 percent or more of the total quantity of milk that is physically received during the month from dairy farmers and handlers described in § 1000.9(c), including milk that is diverted from the plant, is transferred to pool distributing plants. Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the plant's shipping percentage.

* * * * *

[FR Doc. 01–55533 Filed 10–31–01; 8:45 am]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 3

[INS No. 2172–01; AG Order No. 2528–2001]

RIN 1115–AG41

Executive Office for Immigration Review; Review of Custody Determinations

AGENCY: Immigration and Naturalization Service, Justice; and Executive Office for Immigration Review, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the regulations of the Executive Office for Immigration Review (EOIR), by expanding the existing regulatory provision for a temporary automatic stay of an immigration judge's decision to order an alien's release in any case in which a district director has ordered that the alien be held without bond or has set a bond of $10,000 or more, to maintain the status quo while the Immigration and Naturalization Service seeks expedited review of the custody order by the Board of Immigration Appeals (Board) or by the Attorney General.

DATES: *Effective date:* This interim rule is effective October 29, 2001.

Comment date: Written comments must be submitted on or before December 31, 2001.

ADDRESSES: Please submit written comments to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2172–01 on your correspondence. The public may also submit comments electronically to the Service at insregs@usdoj.gov. When submitting comments electronically, please make sure that you include INS No. 2172–01 in the subject field. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: For matters relating to the Executive Office for Immigration Review: Chuck Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Falls Church, VA 22041, telephone (703) 305–0470 (not a toll-free call). For matters relating to the Immigration and Naturalization Service: Daniel S. Brown, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Room 6100, Washington, DC 20536, telephone (202) 514–2895 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Section 236 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1226, authorizes the Attorney General to determine whether to hold an alien in custody while proceedings are pending to determine whether an alien is to be removed from the United States. As a general principle, whether to detain an alien or to release the alien on bond or other appropriate conditions is a matter entrusted to the Attorney General's discretion. Under section 236(c) of the Act, however, certain aliens are subject to mandatory detention during the course of proceedings to determine their removal. These generally include individuals who are inadmissible or deportable due to the commission of specified crimes or due to having engaged in terrorist activity.

More than a century ago, the Supreme Court upheld detention as a necessary aspect of the exclusion or expulsion of aliens. *Wong Wing* v. *United States*, 163 U.S. 228, 235 (1896); *see also Carlson* v. *Landon*, 342 U.S. 524, 538 (1952) (''Detention is necessarily a part of this deportation procedure. Otherwise aliens arrested for deportation would have opportunities to hurt the United States during the pendency of deportation proceedings.''). An alien's interest in being at liberty during the course of immigration proceedings is ''narrow'' and ''circumscribed by considerations of the national interest.'' *Doherty* v. *Thornburgh*, 943 F.2d 204, 208, 208, 209 (2d Cir. 1991). ''An alien's freedom from detention is only a variation on the alien's claim of an interest in entering the country.'' *Clark* v. *Smith*, 967 F.2d 1329, 1332 (9th Cir. 1992).

Section 236 of the Act confers discretion upon the Attorney General to determine the custody of aliens who are in proceedings as long as they are not subject to the mandatory detention provisions of section 236(c) of the Act. The detention of aliens during the pendency of the immigration proceedings serves two essential purposes: ensuring removal by preventing the alien from fleeing, and protecting the public from potential harm.

Under the regulations, the Immigration and Naturalization Service (Service) makes the initial custody decision in each case—that is, whether to keep the alien in detention pending completion of the removal proceedings, or whether to release the alien on bond or other appropriate conditions. The alien, however, may ask an immigration judge to review the custody decision,

subject to specified exceptions in § 3.19(h). The immigration judge may then reduce the required bond amount, release the alien on his or her own recognizance, or make such other custody decision as the immigration judge finds warranted. The Board then has jurisdiction to hear an appeal (whether by the alien or by the Service) from the immigration judge's decision.

Stays Pending Appeals of Custody Determinations

This rule revises the existing provisions in § 3.19(i). That rule currently provides for an automatic stay in certain cases where the Service has denied release of an alien during the pendency of removal proceedings or has set a bond in excess of $10,000, an immigration judge orders an alien released, and the Service promptly files a Form EOIR–43, Notice of Intent to Appeal Custody Redetermination, with the Immigration Court. If the Service then files a timely appeal, the stay will continue pending the disposition of the appeal by the Board. *See Matter of Joseph*, Int. Dec. 3387 (1999).

Under the existing rule, since the expiration of the Transition Period Custody Rules, this automatic stay applies only to cases involving aliens subject to mandatory detention. This interim rule extends the existing scope of the automatic stay provisions in § 3.19(i) to authorize the Service, in its discretion, to invoke the automatic stay in other cases in which the Service has denied release of an alien during the pendency of the removal proceedings or has set a bond of $10,000 or more.

This change will allow the Service to maintain the status quo while it seeks review by the Board, and thereby avoid the necessity for a case-by-case determination of whether a stay should be granted in particular cases in which the Service had previously determined that the alien should be kept in detention and no conditions of release would be appropriate. This stay is a limited measure and is limited in time—it only applies where the Service determines that it is necessary to invoke the special stay procedure pending appeal, and the stay only remains in place until the Board has had the opportunity to consider the matter.

However, in order to ensure that any custody appeal proceedings are conducted on an expeditious basis, this rule also amends § 3.19(i) to add a new limitation that the automatic stay will continue, pending the decision by the Board on appeal, only if the Service files its appeal within ten business days of the immigration judge's order. Under the current rules, once the Service has invoked the automatic stay provision, it has the usual 30 days to file an appeal to the Board. As a matter of practice, the Service does not take that long and makes a prompt decision on whether or not to appeal a custody decision that is subject to an automatic stay. This change in the rule will better reflect the need for an expedited decision in the case of a custody appeal that is subject to an automatic stay.

In addition to the existing provisions for an automatic stay of an immigration judge's custody decision in § 3.19(i), pending an appeal to the Board, this rule also provides an automatic five-day stay of the Board's decision, where the Board dismisses the Service's appeal of an immigration judge's custody decision. This provision will allow the Commissioner a meaningful opportunity to review the Board's decision and to decide whether to certify the case to the Attorney General pursuant to § 3.1(h). Where the Commissioner certifies a custody decision of the Board to the Attorney General within that five-day period, the automatic stay will continue pending the Attorney General's review of the custody issues.

This change in § 3.19 makes explicit, in the context of bond appeals, the general principle that a ''decision of the Board is not final while pending review before the Attorney General on certification.'' *Matter of Farias*, 21 I&N Dec. 269, 282 (BIA 1996; A.G. 1997). This provision for an automatic stay will avoid the necessity of having to decide whether to order a stay on extremely short notice with only the most summary presentation of the issues.

The rule also makes a slight modification to the existing rule by providing that the Form EOIR–43 must be filed within one business day of the decision of the immigration judge. This is intended to afford the Service an opportunity to file the Form EOIR–43 in those cases where the immigration judge's custody decision is issued after normal business hours.

Effective Date of This Interim Rule

The Department's immediate implementation of this interim rule, with provision for post-promulgation public comment, is based upon findings of good cause pursuant to 5 U.S.C. 553(b)(3)(B) and (d).

The immediate implementation of this interim rule without prior public comment is necessary to prevent the release of aliens who may pose a threat to national security and to provide a clear set of procedural rules of administrative procedure with respect to determining the custody conditions and bond status for aliens during the pendency of removal proceedings. The existing rules permit the Service to appeal a decision ordering the release of an alien, but in many cases the rules do not provide for a stay of the release decision during the time that the Service would be pursuing an appeal. Thus, an alien who has received a custody redetermination by an immigration judge is eligible for release under the terms of that order unless and until a stay of that order is granted by the Board.

The time that elapses from the custody redetermination to the granting of a stay by the Board may be significant. The time it takes to draft a notice of appeal and motion for emergency stay and file these documents with the Board is often up to twenty-four hours, as the Service attorney handling the case may have to complete his or her duties in court that day before securing the necessary supervisory approval to file the motion for stay. The Service attorney then must draft the filings and transmit them to the Board in Falls Church, Virginia. The Board then must review the record and adjudicate the motion. The Board does not have a complete record upon which to base a ruling, because that record remains with the immigration court. As a matter of practice, the Board will not grant a stay without communicating with the alien or opposing counsel, so as to ascertain the alien's position regarding the necessity of the stay. Thus, under current procedures, there is a significant window of time wherein the alien may be released while the Service prepares its filings to the Board and while the Board adjudicates the motion. Also, the crucial determination by the Board is made without the benefit of a full record of proceedings and the Board instead relies upon the submissions of the parties.

Another significant problem that is remedied by this provision concerns custody determinations that arise on the west coast. Due to the time difference between the east and west coast, an alien may be ordered released after the Board has closed for the day. When this occurs, the Service is effectively barred from filing a stay request and this significantly increases the period during which the alien may be released.

During this window of time, the Service may be required to release an alien that it believes is a threat to national security or the public safety without even having the opportunity to present its case to the Board. The automatic stay provision allows the Service attorney to maintain the alien's custody status via immediate filing of

the Form EOIR–43. This rule extends the scope of the existing automatic stay provision to cover all cases in which the Service has denied release of an alien pending the completion of removal proceedings or has set a bond of $10,000 or more, and in which the Service specifically invokes the automatic stay in order to seek an expedited appeal. The purpose of the automatic stay is to allow the Service to maintain the status quo during such time as is necessary for the Service to take a prompt appeal to the Board, and the stay only remains in place until the Board has had an opportunity to consider the matter. This rule similarly provides a five-day period after a decision by the Board to allow sufficient time for the Commissioner to determine whether to certify a decision of the Board to the Attorney General for review. These provisions for a temporary automatic stay will avoid the necessity of the Service having to seek stays on a case by case basis and the Board or the Attorney General having to decide whether to order a stay on extremely short notice with only the most summary presentation of the issues.

Finally, the current investigation in connection with recent terrorist activities has resulted in the detention of a large number of individuals. This may overwhelm the capacity of the Service to take the steps necessary to secure stays of custody redeterminations in timely fashion. The automatic stay provision will address this problem and prevent the Service and the Board from being overwhelmed with stay requests.

For these reasons, the Attorney General has determined that there is good cause to publish this interim rule and to make it effective upon filing for public inspection at the Office of the Federal Register, because the delays inherent in the regular notice-and-comment process would be ''impracticable, unnecessary and contrary to the public interest.''

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule extends the scope of the existing automatic stay provision to cover cases in which the Service has denied release of an alien pending the completion of removal proceedings or has set a bond of $10,000 or more, in order to allow the Service to maintain the status quo while it pursues an expedited appeal of an order to release the alien from custody. This rule does not affect small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget (OMB) for review.

Executive Order 13132

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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a final rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (government agencies).

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 is revised to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1101 note, 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

2. Section 3.19 is amended by revising paragraph (i)(2), to read as follows:

§ 3.19 Custody/bond.

* * * * *

(i) * * *

(1) * * *

(2) *Automatic stay in certain cases.* In any case in which the district director has determined that an alien should not be released or has set a bond of $10,000 or more, any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon the Service's filing of a Notice of Service Intent to Appeal Custody Redetermination (Form EOIR–43) with the immigration court within one business day of the issuance of the order, and shall remain in abeyance pending decision of the appeal by the Board of Immigration Appeals. The stay shall lapse if the Service fails to file a notice of appeal with the Board in accordance with § 3.38 within ten business days of the issuance of the order of the immigration judge. If the Board authorizes release (on bond or otherwise), that order shall be automatically stayed for five business days. If, within that five-day period, the Commissioner certifies the Board's custody order to the Attorney General pursuant to § 3.1(h)(1) of this chapter, the Board's order shall continue to be stayed pending the decision of the Attorney General.

Dated: October 26, 2001.

John Ashcroft,

Attorney General.

[FR Doc. 01–27447 Filed 10–29–01; 1:51 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317, 319, and 381

[Docket No. 01–016DF]

Use of Transglutaminase Enzyme and Pork Collagen as Binders in Certain Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending its meat inspection regulations to permit the use of pork collagen and transglutaminase enzyme (TG enzyme), in limited amounts, as binders in certain standardized meat food products. FSIS also is amending its poultry products inspection regulations to permit the use of TG enzyme, in limited amounts, as a binder in certain standardized poultry products. Additionally, FSIS is amending the meat and poultry inspection regulations to require that, when TG enzyme is used to fabricate or reform cuts of meat or poultry, the resulting product bear labeling to indicate that it has been formed from pieces of whole muscle meat, or that it has been reformed from a single cut. FSIS is proceeding with this direct final rule in response to petitions submitted to the Agency by Ajinomoto, U.S.A., Inc. and AMPC, Corp.

DATES: This rule will be effective December 31, 2001 unless FSIS receives written adverse comments within the scope of this rulemaking or written notice of intent to submit adverse comments within the scope of this rulemaking on or before November 30, 2001. If FSIS receives adverse comments, a timely withdrawal will be published in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit adverse comments or notice of intent to submit adverse comments within the scope of this rulemaking to: FSIS Docket Clerk, Docket #01–016DF, Room 102, Cotton Annex, 300 C Street, SW., Washington, DC 20250–3700. Reference materials cited in this document and any comments received will be available for public inspection in the FSIS Docket Room from 8:30 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert C. Post, Ph.D., Director, Labeling and Consumer Protection Staff, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 205–0279

SUPPLEMENTARY INFORMATION:

Background

Ajinomoto and AMPC Petitions

On May 5, 1999, Hogan and Hartson, L.L.P. filed a petition with FSIS on behalf of its client, Ajinomoto, USA, Inc. (Ajinomoto), requesting that the Agency amend its regulations to allow the use of TG enzyme, at usage levels of up to 65 ppm of product formulation, to improve texture and cooking yields in various standardized meat and poultry products. Ajinomoto also requested that FSIS permit TG enzyme to be used as a protein cross-linking agent, at usage levels of up to 65 ppm, to fabricate or reform cuts of meat. When TG enzyme is used to fabricate or reform cuts of meat, Ajinomoto requested that the resulting product be distinguished from its non-fabricated counterpart through terms such as ''formed'' or ''reformed'' as part of the product name (*e.g.* ''formed beef tenderloin''), as opposed to a statement that declares the presence of the enzyme as part of the product name (*e.g.* ''beef tenderloin formed with water and transglutaminase enzyme'').

TG enzyme is derived from a non-toxigenic and non-pathogenic strain of *Streptoverticillium mobaraense* and functions by catalyzing the formation of a covalent bond between the glutamine and lysine side residues of proteins. There are no current allowances in the FSIS regulations or those of the Food and Drug Administration (FDA) for the use of TG enzyme as a binder or protein cross-linking agent in standardized meat or poultry products.

In a previous petition submitted in June 1997, Ajinomoto requested that FSIS permit the use of TG enzyme in both standardized and non-standardized meat and poultry products. In support of the petition, Ajinomoto submitted data to support the generally recognized as safe (GRAS) status of TG enzyme for use as a cross-linking agent in meat and poultry products at levels of up to 65 ppm. As part of its review of the petition, FSIS asked FDA to evaluate the data submitted by Ajinomoto on the safety of TG enzyme for this proposed use. In January 1998, FDA sent a letter to FSIS that said that, although it has not made a determination regarding the GRAS status of any use of this enzyme, FDA would not challenge, at this time, Ajinomoto's conclusion that TG enzyme is safe under the proposed conditions of use.

Based on the findings of FDA's evaluation, described above, and the technical data provided by Ajinomoto, FSIS concluded that TG enzyme was suitable for use in non-standardized meat and poultry products, and in meat and poultry products that have been formulated to reduce sodium or fat content. Thus, the Agency permits the use of TG enzyme, at levels of up to 65 ppm, in such products, provided that the products are identified by a truthful descriptive designation, such as ''low fat pork sausage, water and TG enzyme product.''

Although FSIS determined that TG enzyme was suitable for use in non-standardized meat and poultry products, and in meat and poultry products that have been formulated to reduce sodium or fat content, in its review of the 1997 petition, the Agency also found that Ajinomoto submitted insufficient data on the suitability of the use of TG enzyme in standardized meat and poultry products. FSIS informed Ajinomoto that in order to permit the use of TG enzyme in standardized products, the Agency must pursue rulemaking to amend the regulatory standards of identity. FSIS suggested that Ajinomoto submit a petition to request that the Agency amend the individual meat and poultry product standards to provide for the use of TG enzyme. The Agency also informed Ajinomoto that such a petition must include technical data to establish the suitability of TG enzyme for use in standardized meat and poultry products. In response, Ajinomoto submitted the May 5, 1999, petition, to which this rulemaking responds.

In support of its most recent petition, Ajinomoto submitted numerous published studies on the efficacy of TG enzyme in cross-linking muscle proteins. FSIS determined that the data demonstrate that TG enzyme is effective in improving texture by increasing elasticity and improving cooking yields in standardized meat sausage products, standardized restructured meat products, standardized ''roast beef parboiled and steam roasted'' meat products, and standardized poultry rolls. The Agency also determined that TG enzyme is effective in binding pieces of whole muscle meat to fabricate or reform cuts of meat. FSIS concluded that the data demonstrate efficacy at 65 ppm. However, FSIS found that the petition contained insufficient data to support the use of TG enzyme in

standardized poultry products other than poultry rolls.

In support of its request that cuts of meat fabricated or reformed using TG enzyme be identified as ''formed'' or ''reformed'' in conjunction with the product name, Ajinomoto claimed that TG enzyme does not change the essential character of a meat product. According to the data presented by Ajinomoto, TG enzyme functions to fuse together muscle tissue, and that whole muscle tissues fused together with the TG enzyme have the same taste, aroma, nutritional profile, and other properties as untreated whole muscle tissue. Thus, Ajinomoto argued, the primary difference between a cut of meat formed with TG enzyme and an untreated cut will be the shape or size of the final product.

Because muscle fibers treated with TG enzyme will not be aligned as they would be naturally, the Agency does not agree that TG enzyme does not affect the essential character of a product. However, the Agency does agree that, because the primary difference between a cut of meat formed with TG enzyme and an untreated cut is the shape of the product, special labeling to alert the consumer to the presence of the TG enzyme in the product, such as ''beef tenderloin formed with water and transglutaminase enzyme,'' is not necessary. Therefore, in this direct final rule, the Agency is requiring that products that are fabricated using TG enzyme bear the term ''formed'' or ''reformed'' in conjunction with product name. The words ''formed'' and ''reformed'' are appropriate terms to identify these products because these terms reveal the material fact that multiple pieces of meat have been formed to look like a solid piece of meat. Otherwise, consumers could be misled. The product must also declare the presence of TG enzyme in the list of ingredients on the product's label, as required by 9 CFR 317.2(f)(1) and 381.118(a)(1).

On September 27, 1999, AMPC, Inc., petitioned FSIS to amend its regulations to allow the use of pork collagen, a connective tissue protein, as a binder in sausage as provided in 9 CFR Part 319, at usage levels of up to 3.5% of product formulation. In addition to sausage as provided in 9 CFR Part 319, AMPC requested that FSIS allow the use of pork collagen as a binder in other standardized meat and poultry products, such as cured pork products, luncheon meat, meat food entrée products, pies, turnovers, meat snacks, hors d'oeuvres, pizza and specialty items, meat salads, meat spreads, barbecued meats, poultry breakfast sausages, and canned, frozen, or dehydrated meat food products. There are no current allowances in the FSIS regulations for the use of pork collagen as a binder in standardized meat or poultry products.

Before petitioning FSIS, AMPC submitted a GRAS Notification to FDA concerning the use of pork collagen as a binder in meat products. After consulting with FSIS, FDA sent a letter to AMPC on July 29, 1999, that said that FDA ''has no questions at this time regarding the conclusion of AMPC that pork collagen is GRAS for use as a binder and purge reducing additive in meat and meat type products at a level of 1–3.5% '' (GRAS Notice No. GRN 000021). FDA instructed AMPC to consult with FSIS regarding the suitability of the use of pork collagen in meat and poultry products, and the acceptability of use within the context of the Federal meat and poultry products inspection regulations.

AMPC has conducted research to support the efficacy of pork collagen as a binder in sausages and submitted data with the petition. After evaluating the data submitted by AMPC, FSIS determined that the data demonstrate that pork collagen is effective at reducing purge and improving cooking yields in those meat sausages whose standards permit binders, in certain standardized cured pork products, and in non-standardized meat and poultry products. FSIS also determined that the data demonstrate efficacy at 3.5% of the product formulation. Thus, the Agency permits the use of pork collagen, at the specified levels, in non-standardized meat and poultry products, provided that these products are identified by a truthful descriptive designation, such as ''low fat pork sausage, water and pork collagen.''

However, to permit the use of pork collagen in standardized meat and poultry products, the Agency must conduct rulemaking to amend the individual product standards. Therefore, in response to AMPC's petition, FSIS is publishing this direct final rule to amend the standards of identity for certain meat sausages and certain standardized cured pork products. The Agency is not amending other product standards in this rulemaking because it found that the petition contained insufficient data to support the suitability of pork collagen for use in standardized poultry products.

Current Regulatory Requirements

In order to permit the use of a food ingredient in the production of meat or poultry products, FDA, in consultation with FSIS, assesses the safety of the ingredient's proposed use, while FSIS evaluates its efficacy and suitability for use in meat and poultry products. At the time that AMPC and Ajinomoto submitted their petitions, substances permitted for use in the production of meat products were listed in the chart of approved substances contained in former 9 CFR 318.7(c)(4), and substances permitted to be used in the production of poultry products were listed in the chart of approved substances contained in former 9 CFR 381.147(f)(4). Therefore, in its petition, Ajinomoto requested that FSIS amend the chart of substances in former §§ 318.7(c)(4) and 381.147(f)(4) to include the acceptable use of TG enzyme as a binder and cross-linking agent for sausage and other standardized meat and poultry products. Likewise, in its petition, AMPC requested that FSIS amend the chart of substances in former §§ 318.7(c)(4) and 381.147(f)(4) to include the acceptable use of pork collagen as a binder for sausage and other standardized meat and poultry products.

On December 23, 1999, FSIS published a final rule, ''Food Ingredients and Sources of Radiation Listed or Approved for Use in Meat and Poultry Products,'' designed to improve the efficiency of the procedures used by FSIS and FDA to review and approve the use of food ingredients and sources of radiation in the production of meat and poultry products (64 FR 72168). Under the new regulations, rather than listing substances approved for use in the production of meat and poultry products in the chart of substances contained in former 9 CFR 318.7(c)(4) and former 9 CFR 381.147(f)(4), FDA now lists food ingredients and sources of radiation that are safe for specific use in the production of meat and poultry products in its regulations in title 21 of the CFR. 9 CFR parts 310, 318, 319, and 381 of the FSIS regulations were amended to include appropriate cross-references to title 21 listings of substances and sources of radiation approved for use in meat and poultry products. In the final rule, FSIS also created one list of food ingredients approved for use in the production of meat and poultry products by combining the listing contained in former section 318.7(c)(4) with the listing contained in former section 381.147(f)(4) and moving the combined listing to section 424.21(c). The final rule became effective on January 24, 2000.

Because FDA now lists food ingredients and sources of radiation approved for use in the production of

meat and poultry products in its regulations, FSIS has stated that it will limit substance-specific rulemakings to those necessary to establish specific prohibitions or limitations on the use of food ingredients in the production of meat or poultry products. Such rulemakings are necessary when a standard of identity or composition prohibits or limits the use of an ingredient. In these instances, the standard of identity must be amended to include the permitted use of the ingredient. FSIS does not intend to add any new substances to the chart contained in 9 CFR 424.21(c).

As previously mentioned, FSIS currently permits TG enzyme and pork collagen to be used in non-standardized meat and poultry products, such as meat links or patties, and modified versions of traditional products, such as ''low fat pork sausage, water, and pork collagen product,'' and ''reduced fat breakfast sausage with transglutaminase enzyme,'' provided that these products are identified by a truthful descriptive designation (9 CFR 317.2(c)(1), 317.2(e) and 381.117(a)). However, according to the petitioners, these descriptive designations may confuse some consumers or may cause some consumers to believe that the product identified by the descriptive designation is inferior to the traditional standardized version. Thus, the petitioners requested that, when TG enzyme or pork collagen is used as a binder in certain standardized products, these products be permitted to be identified by a standardized term, such as ''hotdogs'' or ''breakfast sausage.''

The Final Rule

FSIS is amending its meat inspection regulations and poultry products inspection regulations to permit the use of TG enzyme as a binder at up to 65 ppm of product formulation in sausages as provided in 9 CFR part 319, in fabricated steaks under 9 CFR 319.15(d), in ''roast beef parboiled and steam roasted'' under 9 CFR 319.81, and in poultry rolls under 9 CFR 319.81. FSIS is also amending its meat inspection regulations to permit the use of pork collagen as a binder at up to 3.5% of product formulation in sausages whose standards currently permit binders as provided in 9 CFR part 319 and cured pork products as provided in 9 CFR 319.104. Under § 319.104, binders are only permitted in certain cured pork products, such as ''Ham Water Added,'' ''Ham and Water Product-X% of Weight is Added Ingredients,'' and ''Ham with Natural Juices.'' Under this direct final rule, the use of pork collagen is also limited to those particular cured pork products.

Because it no longer adds new substances to the list of approved substances codified at 9 CFR 424.21(c), the Agency is amending the standards of identity for sausage at 9 CFR 319.140, fabricated steaks at 9 CFR 319.15(d), ''roast beef parboiled and steam roasted'' at 9 CFR 319.81, certain cured pork products at 9 CFR 319.104, and poultry rolls at 9 CFR 381.159 to permit the use of either TG enzyme, pork collagen, or both of these substances at the specified levels. The Agency is revising the standards of identity for the sausages that currently permit the use of binders, such as ''breakfast sausage'' (9 CFR 319.143), ''frankfurter,'' ''frank,'' ''furter,'' ''hotdog,'' ''weiner,'' ''vienna,'' ''bologna,'' ''garlic bologna,'' ''knockwurst,'' and similar products (9 CFR 319.180), and ''cheesefurters'' and similar products (9 CFR 319.181), to cross reference 319.140 for the purpose of determining which binders are permitted for use in these products and at what levels. The standards of identity for ''braunschweiger'' (9 CFR 319.182(a)) and ''liver sausage'' or ''liverwurst'' (9 CFR 319.182(b)) permit the addition of binders and contain a cross reference to § 319.140 for purposes of determining the permissible use of these substances in these products. Therefore, there is no need to change these product standards.

The Agency is also amending 9 CFR 317.8(b) of the meat inspection regulations to require that, when transglutaminase enzyme is used to fabricate or reform a cut of meat, the resulting product's labeling include a statement to indicate that the product has been ''formed'' or ''reformed'' as part of the product name. The Agency has determined that such labeling is necessary because TG enzyme alters the essential character of a product by making multiple cuts of meat or pieces of muscle tissue appear to be one intact cut or piece of meat, which could mislead consumers about the nature of this type of product. The Agency has determined that the terms ''formed'' and ''reformed'' are appropriate descriptive terms. Although it must be revealed in the ingredients statement, the presence of TG enzyme need not be disclosed as part of the product name. The labeling of these products must still comply with the requirement that a product that has been prepared by salting, smoking, drying, cooking, chopping, or otherwise must be so described on the label, unless the name of the product implies, or the manner of packaging shows that the product was subject to such preparation (9 CFR 317.2(e)).

The following examples are intended to provide further clarification on the application of the labeling requirements for products that have been fabricated or reformed using TG enzyme. When the surface of two whole beef tenderloins are fused together to create a product with a uniform thickness or portion size, an appropriate name for the product would be ''Formed Beef Tenderloin.'' However, if TG enzyme is used to fuse non-intact pieces of beef tenderloin to form a roll that resembles a tenderloin, an appropriate name would be ''Reformed Beef Tenderloin Pieces.'' When a beefsteak is formed by treating chopped pieces of meat trim with TG enzyme to fuse the pieces together, an appropriate name for this product would be ''Formed Beefsteak, Chopped and Shaped.'' When seam fat is removed from a cut of meat and the cut is then reassembled using TG enzyme, an appropriate name for the product would be ''reformed'' in conjunction with the name of the product, for example, ''Reformed Ribeye Steak.''

The petition did not request that FSIS adopt these labeling requirements for fabricated or reformed poultry products. However, because FSIS has determined that TG enzyme is suitable for use in non-standardized poultry products and modified versions of traditional poultry products, and because it is interested in harmonizing the meat and poultry inspection regulations, the Agency is amending 9 CFR 381.129 to require that the labels of poultry products fabricated or reformed using TG enzyme state that the product has been ''formed'' or ''reformed'' as part of the product name.

Establishments that choose to use TG enzyme or pork collagen in their products will be required to list these substances, in descending order of predominance, in the product's ingredients statement (9 CFR 317.2(f)(1) and 381.118(a)(1)). This will require modification of the product's label and the printing of new product labels.

Because the use of these substances at the level that are being provided for by FSIS is not controversial, and because these substances are permitted in non-standardized products, FSIS expects no adverse comment to result from the changes that it is making in this direct final rule. Therefore, unless the Agency receives written adverse comments within the scope of this rulemaking, or a written notice of intent to submit adverse comments within the scope of this rulemaking, within 30 days, this action will become final 60 days after publication in the **Federal Register**. If written adverse comments within the scope of the rulemaking are received,

the final rulemaking notice will be withdrawn, and the Agency will publish a proposed rulemaking notice that includes a comment period.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. It has been determined to be not significant for purposes of E.O. 12866 and therefore, has not been reviewed by the Office of Management and Budget (OMB).

Effect on Small Entities

This direct final rule will permit the use of TG enzyme and pork collagen in certain standardized meat food products. It also prescribes labeling requirements for meat and poultry products fabricated or reformed using TG enzyme.

The use of these ingredients is voluntary and therefore, the impact of this direct final rule on small establishments is likely to be minimal. FSIS does not believe that any costs associated with changes to labels will be significant. The decision by individual establishments to use these ingredients will be based on their conclusions that the benefits of providing new product to meet consumers' needs outweigh the implementation costs.

Executive Order 12988

This direct final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule: (1) Preempts 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. However, the administrative procedures specified in 9 CFR 306.5, 381.35, and 590.320 through 590.370, respectively, must be exhausted before any judicial challenge of the application of the provisions of this direct final rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA or PPIA.

Paperwork Requirements

Abstract: FSIS has submitted an emergency information collection request for the paperwork and record keeping requirements in this direct final rule in accordance with the Paperwork Reduction Act. Establishments that choose to use any of the substances permitted by this final rule will have to make changes to their product labels.

Estimate of Burden: Establishments must develop product labels in accordance with the regulations. To receive approval of the labels, establishments must complete FSIS Form 7234–1. FSIS program employees review FSIS Form 7234–1 to ensure that the information on the labels complies with the regulations. FSIS estimates that it will take 60 minutes to design and develop modified product labels in accordance with this direct final rule and 15 minutes to prepare FSIS Form 7234–1 and submit it, along with the sketch label, to FSIS.

Establishments will only need to make the label change once.

Respondents: Meat and poultry product establishments.

Estimated Number of Respondents: 992

Estimated number of Responses per Respondents: FSIS estimates that each establishment will modify one product label.

Estimated Total Annual Burden on Respondents: 1,240 hours.

Copies of this information collection assessment can be obtained from Lee Puricelli, Paperwork Specialist, Food Safety and Inspection Service, USDA, Room 109 Cotton Annex., Washington, DC 20250–3700.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the method and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to Lee Puricelli, see the address above, and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) Washington, DC 20253.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this direct final rule and are informed about the mechanism for providing their comments, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. 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 fax list 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 these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

List of Subjects

9 CFR Part 317

Food labeling, Meat Inspection.

9 CFR Part 319

Food grades and standards, Food labeling, Meat inspection.

9 CFR Part 381

Food labeling, Poultry and poultry products.

For the reasons discussed in the preamble, FSIS amends 9 CFR Chapter III as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

2. Section 317.8 is amended by adding a new paragraph (b)(39) to read as follows:

§ 317.8 False or misleading labeling or practices generally; specific prohibitions and requirements for labels and containers.

* * * * *

(b) * * *

(39) When transglutaminase enzyme is used to bind pieces of meat to form a cut of meat, or to reform a piece of meat from a multiple cuts, there shall appear on the label, as part of the product name, a statement that indicates that the product has been ''formed'' or ''reformed,'' in addition to other preparation steps, e.g., ''Formed Beef Tenderloin'' or ''Reformed and Shaped Beef Tenderloin.''

* * * * *

PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

3. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

4. Section 319.15 is amended by revising paragraph (d) to read as follows:

§ 319.15 Miscellaneous beef products.

* * * * *

(d) *Fabricated steak.* Fabricated beef steaks, veal steaks, beef and veal steaks, or veal and beef steaks, and similar products, such as those labeled ''Beef Steak, Chopped, Shaped, Frozen,'' ''Minute Steak, Formed, Wafer Sliced, Frozen,'' ''Veal Steaks, Beef Added, Chopped—Molded—Cubed—Frozen, Hydrolyzed Plant Protein, and Flavoring'' shall be prepared by comminuting and forming the product from fresh and/or frozen meat, with or without added fat, of the species indicated on the label. Such products shall not contain more than 30 percent fat and shall not contain added water or extenders. Transglutaminase enzyme at levels of up to 65 ppm may be used as a binder. Beef cheek meat (trimmed beef cheeks) may be used in the preparation of fabricated beef steaks only in accordance with the conditions prescribed in paragraph (a) of this section.

* * * * *

5. Section 319.81 is amended by adding the following new sentence after the phrase ''shall not exceed 70 percent of the fresh beef weight'':

''Transglutaminase enzyme at levels of up to 65 ppm may be used as a binder in such product.''

6. Section 319.104 is amended by revising paragraph (d) to read as follows:

§ 319.104 Cured pork products.

* * * * *

(d) The binders provided for use in cured pork products in a regulation in this subchapter, in 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B, may be used singly in those cured pork products labeled as ''Ham Water Added,'' ''Ham and Water Product-X% of Weight is Added Ingredients,'' and ''Ham with Natural Juices.'' In addition to the binders referred to in the preceding sentence, the following substances are permitted for use as binders and may be used singly in those cured pork products labeled as ''Ham Water Added,'' ''Ham and Water Product-X% of Weight is Added Ingredients,'' and ''Ham with Natural Juices'': pork collagen at up to 3.5% of the product formulation. Unless their use is provided for in a regulation in this subchapter, in 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B, or in this paragraph, these binders are not permitted to be used in combination with another such binder listed for use in cured pork products. When any such substance is added to these products, the substance shall be declared in the ingredients statement by its common or usual name in order of predominance.

* * * * *

7. Section 319.140 is amended by adding the following new sentence after the phrase ''may contain binders and extenders as provided in a regulation permitting that use in this subchapter or in 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B'':

''In addition to the binders and extenders referred to in the preceding sentence, the following two substances may also be used as binders in those sausages in which the use of such class of substances is permitted: pork collagen at up to 3.5% of the product formulation and transglutaminase enzyme at up to 65 ppm of the product formulation.''

8. Section 319.143 is amended by removing the phrase ''§ 318.7(c)(4) of this subchapter'', and adding ''§ 319.140 of this part'' in its place.

9. Section 319.180 is amended by revising paragraph (e) to read as follows

§ 319.180 Frankfurter, frank, furter, hotdog, weiner, vienna, bologna, garlic bologna, knockwurst, and similar products.

* * * * *

(e) Binders and extenders as provided in § 319.140 of this part may be used in cooked sausage that otherwise comply with paragraph (a) or (b) of this section. When any such substance is added to these products, the substance shall be declared in the ingredients statement by its common or usual name in order of predominance.

* * * * *

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

10. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

11. Section 381.129 is amended by adding a new paragraph (e) to read as follows:

§ 381.129 False or misleading labeling or containers.

* * * * *

(e) When transglutaminase enzyme is used to bind pieces of poultry to form a cut of poultry, or to reform a piece of poultry from a multiple cuts of poultry, there shall appear on the label, as part of the product name, a statement that indicates that the product has been ''formed'' or ''reformed,'' in addition to other preparation steps, e.g., ''Formed Turkey Thigh Roast'' or ''Reformed and Shaped Chicken Breast.''

12. Section 381.159 is amended by revising paragraph (a) to read as follows:

§ 381.159 Poultry rolls.

(a) Binders or extenders may be added in accordance with a regulation in this subchapter, in 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B. In addition to the binders referred to in the preceding sentence, the following substances are permitted for use as binders in poultry rolls: transglutaminase enzyme at up to 65 ppm. When binding agents are added in excess of 3 percent for cooked rolls and 2 percent for raw rolls, the common name of the agent or the term ''Binders Added'' shall be included in the name of the product; e.g., ''Turkey Roll-Gelatin Added.''

* * * * *

Done at Washington, DC, on: October 25, 2001.

Thomas J. Billy,

Administrator.

[FR Doc. 01–27264 Filed 10–30–01; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 918

[No. 2001–25]

RIN 3069–AB05

Maintenance of Effort—Minimum Number of Annual Bank Board of Directors Meetings

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is adopting as final, without change, the interim final rule that amended the maintenance of effort provision of its regulations to eliminate the three-year averaging requirement and to reduce the required minimum number of in-person board of directors meetings that a Federal Home

Loan Bank (Bank) must hold annually to six meetings.

DATES: This final rule shall become effective on November 30, 2001.

FOR FURTHER INFORMATION CONTACT: Scott L. Smith, Acting Director, at (202) 408–2991, Patricia L. Sweeney, Program Analyst, at (202) 408–2872, Office of Policy, Research, and Analysis; or Sharon B. Like, Senior Attorney-Advisor, at (202) 408–2930, or Thomas Hearn, Senior Attorney-Advisor, at (202) 408–2976, Office of the General Counsel; or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. A telecommunications device for deaf persons (TDD) is available at (202) 408–2579.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

On December 21, 1999, the Finance Board published an interim final rule implementing the specific limits on annual compensation for the Chairperson, Vice Chairperson, and other members of a Bank's board of directors imposed by section 7(i) of the Federal Home Loan Bank Act, as amended by the Gramm-Leach-Bliley Act (GLB Act) (section 606(b)), Pub. L. No. 106–102, 113 Stat. 1338 (November 12, 1999). *See* 64 FR 71275 (December 21, 1999). The interim final rule required each Bank's board of directors, notwithstanding the compensation limits, to continue to maintain its level of oversight of the management of the Bank (maintenance of effort standard). Consistent with this maintenance of effort standard, the interim final rule required that each Bank's board of directors hold no fewer in-person meetings in any year than it held on average over the immediately preceding three years (three-year averaging requirement).

The Finance Board finalized the interim final rule on March 14, 2000. *See* 65 FR 13663 (March 14, 2000). The final rule revised the minimum meetings requirement in § 918.7(a) to the lesser of: (1) Nine; or (2) the three-year averaging requirement. *See id.* This change was made in order to avoid the vagaries of timing of the pure averaging requirement and reflect the operational reality at the Banks regarding the average number of meetings held over the preceding three years. In addition, § 918.7(b) of the final rule clarified that a Bank could apply to the Finance Board for a waiver of the minimum meetings requirement pursuant to the procedures of 12 CFR part 907. *See id.*

Based on subsequent experience with the minimum meetings requirement, on May 14, 2001, the Finance Board published a second interim final rule that further amended the maintenance of effort provision to eliminate the three-year averaging requirement and to reduce the required minimum number of in-person board of directors meetings that a Bank must hold annually to six meetings. *See* 66 FR 24263 (May 14, 2001). The May 2001 interim final rule also removed the waiver provision of § 918.7(b), because the ability to request a waiver of Finance Board regulatory provisions is already provided for in 12 CFR part 907. *See id.*

As discussed in the **SUPPLEMENTARY INFORMATION** section of the May 2001 interim final rule, these changes were made based on arguments by the Banks that they would be able to conduct their business more efficiently and effectively by holding only six annual in-person board meetings. The Banks indicated that they would be able to continue to maintain their level of oversight over the management of the Banks by conducting more business at fewer, but longer, board meetings, and/or placing greater reliance on board committees for the conduct of certain board business. The Banks noted that the three-year averaging requirement created a standard that varied among the Banks, with, for example, one Bank, based on the standard, already holding only six in-person board meetings annually.

The Finance Board also determined, based on a survey of the number of board of directors meetings held in 1999 by a number of financial institution holding companies and housing Government-Sponsored Enterprises (GSEs), that requiring at least six in-person Bank board of directors meetings in any year is within the range of the number of annual board meetings held by such holding companies and GSEs. Further, providing the boards of the Banks with greater discretion in determining the number of board meetings to hold annually is consistent with the GLB Act's emphasis on devolving governance issues to the Banks.

The May 2001 interim final rule provided for a 30-day comment period, which closed on June 13, 2001. The Finance Board received comment letters from two Banks, which are discussed below.

II. Analysis of Final Rule

The final rule adopts § 918.7 of the May 2001 interim final rule without change. Section 918.7 states:

> Notwithstanding the limits on annual directors' compensation established by section 7(i) of the [Bank] Act, as amended, the board of directors of each Bank shall continue to maintain its level of oversight of the management of the Bank. In maintaining its level of oversight, the board of directors of a Bank shall hold at least six in-person meetings in any year.

12 CFR 918.7.

One commenter interpreted the changes to the maintenance of effort requirement as a conclusion by the Finance Board that six in-person board meetings each year will fully enable the directors of a Bank to fulfill their fiduciary duties to the Bank's members. This comment misinterprets the maintenance of effort requirement. Section 918.7 requires that, in maintaining its level of oversight of the management of the Bank, the Bank shall hold *at least* six in-person board meetings in any year. As the **SUPPLEMENTARY INFORMATION** section of the May 2001 interim final rule explains, if a Bank's board intends to hold fewer annual in-person board meetings than it has held in past years, it would be in the board's best interest to document how it will continue to meet the maintenance of effort standard and its fiduciary duties regarding the Bank's safety and soundness. If the Bank cannot continue to maintain its level of oversight over Bank management with six board meetings in a given year, then it would need to hold more board meetings per year. *See* 66 FR at 24264.

The other commenter contended that the Finance Board should only be concerned that a Bank's board of directors has established sound governing processes, and should not pre-determine what governance practices are absolutely required for all Banks in all circumstances. As discussed in the **SUPPLEMENTARY INFORMATION** section of the March 2000 final rule, the minimum meetings requirement was adopted for safety and soundness reasons. While the Finance Board acknowledges that decisions on the number of Bank board meetings generally should be within the purview of the corporate governance responsibilities of the Banks' boards, the Finance Board believes that its safety and soundness concerns with respect to the Bank boards' level of oversight of Bank management warrant a regulatory response. Accordingly, the Finance Board is retaining the minimum meetings requirement in the final rule.

III. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this final rule, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply. Moreover, the final rule applies only to the Banks, which do not come within the meaning of ''small

entities'' as defined in the Regulatory Flexibility Act. *See id.* section 601(6).

IV. Paperwork Reduction Act

This final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

Accordingly, the interim final rule amending 12 CFR part 918, published at 66 FR 24263 (May 14, 2001), is adopted by the Federal Housing Finance Board as final without change.

Dated: October 24, 2001.

By the Board of Directors of the Federal Housing Finance Board.

J. Timothy O'Neill,

Chairman.

[FR Doc. 01–27389 Filed 10–30–01; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–310–AD; Amendment 39–12474; AD 2001–21–51]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, and –800 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2001–21–51 that was sent previously to all known U.S. owners and operators of certain Boeing Model 737–600, –700, and –800 series airplanes by individual notices. This AD requires a detailed visual inspection for damage of the aft pressure bulkhead at body station (BS) 1016 and the forward attachment of the vertical fin at body section 48, and corrective action, if necessary. This action is prompted by a report of damage to the web of the aft pressure bulkhead at BS 1016. The actions specified by this AD are intended to find and fix damage of the aft pressure bulkhead at BS 1016 and the forward attachment of the vertical fin at body section 48, which could result in structural failure of the aft pressure bulkhead and consequent uncontrolled decompression, or loss of structural integrity of the forward support of the vertical fin, loss of the vertical fin, and consequent loss of control of the airplane.

DATES: Effective November 5, 2001, to all persons except those persons to whom it was made immediately effective by emergency AD 2001–21–51, issued October 12, 2001, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 5, 2001.

Comments for inclusion in the Rules Docket must be received on or before December 31, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–310–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2001-NM–310-AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Scott Fung, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–1221; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On October 12, 2001, the FAA issued emergency AD 2001–21–51, which is applicable to certain Boeing Model 737–600, –700, and –800 series airplanes.

The FAA recently received a report indicating that an operator found damage to the web of the aft pressure bulkhead at body station (BS) 1016 on a Boeing Model 737–700 series airplane. One section of the web had two large dents that crossed a radial tearstrap and a crease common to one edge. During replacement of the damaged web sections of the bulkhead, additional damage to the vertical shear beam web and to the skin adjacent to the attachment fittings of the vertical fin at BS 1016 was found. The vertical shear beam webs are integral to the attachment fittings that attach the vertical fin to the fuselage. A shimmy event of the main landing gear (MLG) on that airplane also was reported, and was so severe that it damaged the MLG and resulted in replacement of the right MLG.

Subsequent to the first report, three other operators reported similar damage to the aft pressure bulkhead on other Boeing Model 737–700 series airplanes, following severe shimmy events which resulted in damage to the MLG. A 0.65-inch crack in the aft pressure bulkhead also was found on one of the damaged airplanes. Shimmy events are a possible cause of the aft pressure bulkhead damage; however, the actual cause is undetermined. Hard landings and tail strikes are other possible causes. Such damage, if not fixed, could result in structural failure of the aft pressure bulkhead and consequent uncontrolled decompression, or loss of structural integrity of the forward support of the vertical fin, loss of the vertical fin, and consequent loss of control of the airplane.

Boeing Model 737–600 and –800 series airplanes have identical structure in the subject area and may also be subject to the same unsafe condition described above.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Telegraphic Alert Service Bulletin, 737–53A1238, dated October 11, 2001, which describes procedures for a detailed visual inspection for damage of the aft pressure bulkhead at body station (BS) 1016 and the forward attachment of the vertical fin at body section 48. For airplanes on which damage is found, the service bulletin describes procedures for doing an additional detailed visual inspection of the vertical beam web installation. The service bulletin also specifies contacting Boeing for repair of any damage found, and reporting inspection results to Boeing.

Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued emergency AD 2001–21–51

to find and fix damage of the aft pressure bulkhead at BS 1016 and the forward attachment of the vertical fin at body section 48, which could result in structural failure of the aft pressure bulkhead and consequent uncontrolled decompression, or loss of structural integrity of the forward support of the vertical fin, loss of the vertical fin, and consequent loss of control of the airplane. The AD requires a detailed visual inspection for damage of the aft pressure bulkhead at body station 1016 and the forward attachment of the vertical fin at body section 48, and corrective action, if necessary. The actions are required to be accomplished in accordance with the service bulletin previously described, except as discussed below.

Differences Between This AD and the Telegraphic Service Bulletin

Although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle Aircraft Certification Office, to make such findings.

The service bulletin also specifies doing a detailed visual inspection of the aft pressure bulkhead at body station 1016 and the forward attachment of the vertical fin at body section 48 for damage, within a compliance time that ranges between 5 and 30 days, depending upon airplane grouping. However, this AD also requires doing the detailed visual inspection before further flight if a severe shimmy event that damaged the main landing gear, a hard landing, or a tail strike occurs after the effective date of this AD.

Interim Action

This is considered to be interim action. The inspection reports that are required by this AD will enable the FAA to complete its evaluation of the need for final action. Once final action is developed, approved, and made available, the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on October 12, 2001, to all known U.S. owners and operators of Boeing Model 737–600, –700, and –800 series airplanes; line numbers 1 through 405 inclusive, and line numbers 466, 585, 590, and 793. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ''**ADDRESSES.**'' All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–310–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, 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 adding the following new airworthiness directive:

2001–21–51 Boeing: Amendment 39–12474. Docket 2001–NM–310–AD.

Applicability: Model 737–600, –700, and –800 series airplanes; line numbers 1 through 405 inclusive, and line numbers 466, 585, 590, and 793; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For 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 (f) 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 find and fix damage of the aft pressure bulkhead at body station 1016 and the forward attachment of the vertical fin at body section 48, which could result in structural failure of the aft pressure bulkhead and consequent uncontrolled decompression, or loss of structural integrity of the forward support of the vertical fin, loss of the vertical fin, and consequent loss of control of the airplane; accomplish the following:

Inspection

(a) Do a detailed visual inspection for damage of the aft pressure bulkhead at body station 1016 and the forward attachment of the vertical fin at body section 48, according to Boeing Telegraphic Alert Service Bulletin, 737–53A1238, dated October 11, 2001. Except as provided by paragraph (b) of this AD, do the inspections at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(1) For Group 1 airplanes as identified in paragraph 1.A., ''Effectivity,'' of the service bulletin: Within 5 days after the effective date of this AD.

(2) For Group 2 airplanes as identified in paragraph 1.A., ''Effectivity,'' of the service bulletin: Within 10 days after the effective date of this AD.

(3) For Group 3 airplanes as identified in paragraph 1.A., ''Effectivity,'' of the service bulletin: Within 30 days after the effective date of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(b) For airplanes identified in paragraphs (b)(1) and (b)(2) of this AD: Do the inspection at the time specified in those paragraphs, as applicable.

(1) For Group 2 or Group 3 airplanes on which a severe shimmy event that damaged the main landing gear before the effective date of this AD, or on which a hard landing or a tail strike occurred before the effective date of this AD: Do the inspection required by paragraph (a) of this AD at the time specified in paragraph (a)(1) of this AD.

(2) For Group 3 airplanes on which a shimmy event that damaged the aircraft interior or the flaps occurred before the effective date of this AD: Do the inspection required by paragraph (a) of this AD at the time specified in paragraph (a)(2) of this AD.

(c) Do the inspection required by paragraph (a) of this AD before further flight after any of the following events occurring after the effective date of this AD: A severe shimmy event that damaged the main landing gear, a hard landing, or a tail strike.

Corrective Action

(d) If any damage is found during the inspection required by this AD, before further flight, do a detailed visual inspection of the vertical beam web installation for damage, according to Boeing Telegraphic Alert Service Bulletin, 737–53A1238, dated October 11, 2001. If any damage is found, before further flight, repair all damage per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Reporting Requirement

(e) Submit a report of inspection findings (both positive and negative) to the Manager, Seattle ACO, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181; at the applicable time specified in paragraph (e)(1) or (e)(2) of this AD. The report must include the following: The approximate date of inspection; whether the shimmy dampers were installed subsequent to aircraft delivery; a description of any structural damage found and its location, as well as the extent and depth of the damage, or whether structural damage was NOT found; whether any shimmy event, hard landing, engine-out, or tail strike has occurred; the airplane serial number; and the number of landings and flight hours on the airplane. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Submit the report within 5 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection has been accomplished prior to the effective date of this AD: Submit the report within 5 days after the effective date of this AD.

Alternative Methods of Compliance

(f) 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, Seattle ACO, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Except as provided by paragraph (d) of this AD, the actions shall be done in accordance with Boeing Telegraphic Alert Service Bulletin, 737–53A1238, dated October 11, 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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on November 5, 2001, to all persons except those persons to whom it was made immediately effective by emergency AD 2001–21–51, issued on October 12, 2001, which contained the requirements of this amendment.

Issued in Renton, Washington, on October 22, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27188 Filed 10–30–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–281–AD; Amendment 39–12491; AD 2001–22–12]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 727 series airplanes. This action requires repetitive inspections for migration or corrosion of the outer hinge pins that attach the horizontal stabilizer to the vertical fin, and various follow-on actions, if necessary. This action also provides other repetitive inspections for cracking or corrosion of the hinge pins, which terminate the required repetitive inspections for migration or corrosion; these inspections are optional for airplanes on which no migration or corrosion is found. This action is necessary to find and fix corrosion or cracking in the hinge pins of the horizontal stabilizer, which could lead to structural degradation of the hinge of

the horizontal stabilizer and result in loss of the horizontal stabilizer and consequent loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective November 15, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 15, 2001.

Comments for inclusion in the Rules Docket must be received on or before December 31, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–281–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001-NM–281-AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2774; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports of cracks and corrosion in the outer hinge pins that attach the horizontal stabilizer to the vertical fin on several Boeing Model 727 series airplanes. The cracks in the outer hinge pins, which are made of 4330 steel, have been attributed to stress corrosion. These cracks often initiate in corroded areas of the hinge pin not protected by chrome plating. Corrosion has also been found on inner fail-safe hinge pins. Corrosion or cracking in the outer hinge pins of the horizontal stabilizer could lead to structural degradation of the stabilizer hinge joint and consequent loss of the horizontal stabilizer, which would result in loss of controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 727–55A0090, Revision 1, dated September 20, 2001, which describes procedures for repetitive detailed visual inspections for migration or corrosion of the outer hinge pins of the horizontal stabilizer, and various follow-on actions, if necessary. The follow-on actions include:

- A torque test (referred to in the service bulletin as a ''torque check'') of the nut on the outer hinge pins, and reduction of the torque values for the nut on the outer hinge pins, if necessary.
- Repetitive detailed visual and magnetic particle inspections for corrosion or cracking of the outer and inner hinge pins (which also involves removal of outer and inner hinge pins, as necessary, and application of corrosion preventative compound or grease on the hinge pins).
- Replacement of migrated, cracked, or broken hinge pins with new or serviceable hinge pins.

Accomplishment of the repetitive detailed visual and magnetic particle inspections for corrosion or cracking of the outer and inner hinge pins, as necessary, including all associated actions, eliminates the need for the repetitive detailed visual inspections for migration or corrosion of the hinge pins.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to find and fix corrosion or cracking in the outer hinge pins of the horizontal stabilizer, which could lead to structural degradation of the hinge of the horizontal stabilizer and result in loss of the horizontal stabilizer and consequent loss of controllability of the airplane. This AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between This AD and Service Bulletin

This AD differs from the referenced service bulletin in the following ways:

- The service bulletin specifies that the manufacturer may be contacted for disposition of repair conditions. However, this AD requires the repair of those conditions to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle Aircraft Certification Office, to make such findings.
- The referenced service bulletin recommends accomplishment of the repetitive detailed visual and magnetic particle inspections for corrosion or cracking of the outer and inner hinge pins; and provides initial and repetitive compliance times for these inspections. However, for airplanes on which no migrated, cracked, broken, or corroded hinge pins are found, this AD provides for accomplishment of the repetitive detailed visual and magnetic particle inspections as an option which terminates the requirement for repetitive inspections for pin migration or corrosion.

Interim Action

This is considered to be interim action. The FAA is currently considering requiring, for all airplanes, accomplishment of the inspections in Part 3 and Part 4 of the service bulletin, which—as described above—are specified in this AD as optional for airplanes on which no migrated, cracked, broken, or corroded hinge pins are found. However, the planned compliance time for such inspections is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments

received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001-NM–281-AD.'' The postcard will be date-stamped and returned to the commenter.

Regulatory Impact

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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, 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 adding the following new airworthiness directive:

2001–22–12 Boeing: Amendment 39–12491. Docket 2001-NM–281–AD.

Applicability: All Model 727 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For 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 (f) 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 find and fix corrosion or cracking in the hinge pins of the horizontal stabilizer, which could lead to structural degradation of the hinge of the horizontal stabilizer and result in loss of the horizontal stabilizer and consequent loss of controllability of the airplane, accomplish the following:

One-Time Inspection and Torque Test, and Follow-On Actions (Certain Airplanes)

(a) For outer hinge pins that attach the horizontal stabilizer to the vertical fin on which the actions in Boeing Service Bulletin 727–55–0086, Revision 1, dated June 23, 1988, have NOT been accomplished prior to the effective date of this AD: Within 90 days after the effective date of this AD, do a one-time detailed visual inspection for migration or corrosion of the outer hinge pins, per Part 1 of the Work Instructions of Boeing Alert Service Bulletin 727–55A0090, Revision 1, dated September 20, 2001. If no migration or corrosion of an outer hinge pin is found, before further flight, do a torque test (referred to in the service bulletin as a ''torque check'') of the nuts on the outer hinge pins to determine the existing torque values and if any hinge pins are cracked or broken, per Boeing Alert Service Bulletin 727–55A0090, Revision 1.

Note 2: Boeing Service Bulletin 727–55–0086, Revision 1, dated June 23, 1988, recommends a one-time inspection and application of primer to prevent corrosion on the outer hinge pins of the horizontal stabilizer on all Boeing Model 727 series airplanes. That service bulletin also specifies a reduction of torque values for installing the nuts of the outer hinge pins, which is intended to prevent stress corrosion cracking.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) For any outer hinge pin that is not migrated, cracked, broken, or corroded, torque the nut on the outer hinge pin within the limits specified in Boeing Alert Service Bulletin 727–55A0090, Revision 1, per that service bulletin, and within 180 days after accomplishment of paragraph (a) of this AD, do the initial inspection in paragraph (b) of this AD, and applicable follow-on actions.

(2) For any migrated, cracked, or broken outer hinge pin that is not corroded: Do paragraph (c) of this AD.

(3) For any corroded outer hinge pin: Do paragraph (d) of this AD.

Repetitive Inspections

(b) For outer hinge pins of the outer horizontal stabilizer on which the actions in Boeing Service Bulletin 727–55–0086, Revision 1, dated June 23, 1988, HAVE been accomplished prior to the effective date of this AD, and airplanes identified in paragraph (a)(1) of this AD: Within 90 days after the effective date of this AD, except as provided by paragraph (a) of this AD, do a detailed visual inspection for migration or corrosion of both the outer and inner hinge pins, per Part 2 of the Work Instructions of Boeing Alert Service Bulletin 727–55A0090, Revision 1, dated September 20, 2001. If no migration or corrosion of a hinge pin is found, repeat the inspection every 180 days, per Boeing Alert Service Bulletin 727–55A0090, Revision 1, until paragraph (e) of this AD is accomplished.

Follow-On Corrective Actions: Migrated, Cracked, or Broken Hinge Pin

(c) If any migration of the hinge pin or a cracked or broken hinge pin is found during an inspection per paragraph (a) or (b) of this AD, but NO corrosion is found: Before further flight, do all actions in Part 4 of the Work Instructions of Boeing Alert Service Bulletin 727–55A0090, Revision 1, dated September 20, 2001, per paragraph (e) of this AD.

Note 4: Parts 1 and 2 of the Work Instructions of Boeing Alert Service Bulletin 727–55A0090, Revision 1, refer to Figures 4 and 5 of that service bulletin as follow-on corrective actions for certain conditions. Figures 4 and 5 of that service bulletin specify accomplishment of Parts 3 and 4, respectively, of the Work Instructions of that service bulletin.

Follow-On Corrective Actions: Corrosion

(d) If any corrosion of a hinge pin is found during an inspection per paragraph (a) or (b) of this AD: Do paragraph (d)(1) or (d)(2) of this AD, as applicable.

(1) If corrosion is found on the inner hinge pin only: Before further flight, do all actions in Part 3 of the Work Instructions of Boeing Alert Service Bulletin 727–55A0090, Revision 1, dated September 20, 2001, per paragraph (e) of this AD.

(2) If corrosion is found on the outer hinge pin: Before further flight, do all actions in Part 4 of the Work Instructions of Boeing Alert Service Bulletin 727–55A0090, Revision 1, dated September 20, 2001, per paragraph (e) of this AD.

Optional Inspections

(e) Accomplishment of detailed visual and magnetic particle inspections for corrosion or cracking including all associated actions (such as removal of outer, inner, or outer AND inner hinge pins, as applicable, and application of corrosion preventative compound or grease), per Part 3 or 4, as applicable, of the Work Instructions of Boeing Alert Service Bulletin 727–55A0090, Revision 1, dated September 20, 2001; AND accomplishment of applicable follow-on actions per paragraphs (e)(1) and (e)(2) of this AD, as applicable; terminates the repetitive inspections required by paragraph (b) of this AD.

(1) If any corrosion or cracking is found, replace the outer, inner, or outer AND inner hinge pins, as applicable, with new or serviceable pins, per Boeing Alert Service Bulletin 727–55A0090, Revision 1, EXCEPT, where the service bulletin specifies to contact Boeing for appropriate action, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD. And,

(2) Repeat the inspections in Part 3 or 4 of the service bulletin, as applicable, at the applicable time specified in the ''REPEAT INSPECTIONS'' column of the table under paragraph 1.E. ''Compliance'' of Boeing Alert Service Bulletin 727–55A0090, Revision 1.

Alternative Methods of Compliance

(f) 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, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Except as provided by paragraph (e)(1) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 727–55A0090, Revision 1, dated September 20, 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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on November 15, 2001.

Issued in Renton, Washington, on October 24, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27214 Filed 10–30–01; 8:45 am]

BILLING CODE 4910–13–U

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1115

Substantial Product Hazard Reports

AGENCY: Consumer Product Safety Commission.

ACTION: Final amendment to interpretative rule.

SUMMARY: Section 15(b) of the Consumer Product Safety Act, requires manufacturers, distributors, and retailers of consumer products to report possible substantial product hazards to the Commission. The Consumer Product Safety Commission publishes a final amendment to its interpretative rule advising manufacturers, distributors, and retailers how to comply with the requirements of section 15(b). The amendment points out that firms that obtain information concerning products manufactured or sold outside of the United States that may be relevant to the existence of potential defects and hazards associated with products distributed within the United States should evaluate that information and, if necessary, report under section 15(b).

EFFECTIVE DATE: This revision is effective November 30, 2001.

FOR FURTHER INFORMATION CONTACT: Marc Schoem, Director, Division of Recalls and Compliance, Consumer Product Safety Commission, Washington. D.C. 20207, telephone—(301) 504–0608, ext. 1365, fax.—(301) 504–0359, E-mail address—*mschoem@cpsc.gov.*

SUPPLEMENTARY INFORMATION: Section 15(b) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2064(b) requires manufacturers, distributors, and retailers of consumer products to report possible ''substantial product hazards'' to the Commission. In 1978, the Commission published in the **Federal Register** ''Substantial Product Hazard Reports'', 16 CFR 1115, an interpretative rule that set forth the Commission's understanding of this requirement and established procedures for filing such reports and proffering remedial action to the Commission. That rule addresses the types of information a firm should evaluate in considering whether to report. It does not, however, specifically address information about experience with products manufactured or sold outside of the United States. The Commission has always expected that firms would report when they obtained reportable information, no matter where that information comes from. Neither the statute, nor the rule itself, suggests otherwise.

Over the past several years, the Commission has received reports under section 15(b) that included information on experience with products abroad and technical data concerning such products. When appropriate, the Commission has initiated recalls based in whole or in part on that experience. In addition, the Bridgestone/Firestone tire recall of 2000 focused public attention on the possible relevance of information generated abroad to safety issues in the United States. Accordingly, to assure that firms who obtain information generated abroad are aware that they should consider such information in deciding whether to report under section 15(b), on January 3, 2001, the Commission solicited comments in the **Federal Register** on a proposed policy statement. The statement set forth the Commission's position that firms should evaluate and, if appropriate, report to the Commission information concerning products

manufactured or sold outside of the United States that may be relevant to defects and hazards associated with products distributed within the United States

On June 7, 2001, after considering the comments, the Commission published in the **Federal Register** a final policy statement memorializing this position. Simultaneously, the Commission proposed for comment an amendment to codify this policy guidance as part of the Substantial Product Hazard Reports interpretative rule, 16 CFR 1115. The proposed amendment notes in substance that information about product experience, performance, design or manufacture outside the United States may be relevant to products sold or distributed in the United States. It further notes that firms should study and evaluate such information under section 15(b).

Discussion: The Commission received four comments in response to the proposed amendment. One of these commentors, the CPSC Coalition of the National Association of Manufacturers (''NAM''), resubmitted comments that it had presented in response to the Commission's January proposed policy statement. NAM's resubmission contended that the Commission's response to its comments to that proposal did not take the Coalition's concerns into account. However, NAM did not point to any specific inadequacy in the Commission's response, nor did it otherwise elaborate on its contention. The Commission, on the other hand, believes that its response to the NAM comments in the June 7 **Federal Register** notice was more than adequate. The NAM comments largely voiced the same hypothetical concerns that commentors on the original 1977 proposed interpretative rule on reporting raised. As the June 7 **Federal Register** notice points out, the Commission addressed the substance of those comments in the preamble to and text of the final rule in 1978. 43 FR 34988. The Commission believes, therefore, that the NAM comments require no further response.

a. Imputing Knowledge: The three commentors other than NAM expressed concern that the proposed amendment treated information generated abroad in the same manner that the Commission views domestically obtained data. In the commentors' view, the amendment should have, but did not, take into account differences in data-gathering capabilities abroad from those within the United States, as well as perceptions of the significance of data that becomes available. The commentors requested that the final rule or its preamble recognize these differences. These commentors also noted that U.S. subsidiaries of foreign companies are often not in a position to require corporate parents to collect and/or forward safety-related information to those subsidiaries. They further indicated that U.S. subsidiaries will not necessarily be aware of, or be able to obtain, information that other independent subsidiaries of a common foreign parent acquire. Again, the commentors suggested that the Commission recognize in the final rule or its preamble these possible impediments to the acquisition of information.

The issue of obtaining and evaluating information from abroad is pertinent to two aspects of reporting—timely reporting and corrective action. With respect to the first aspect—failing to report in a timely manner or not at all, the Commission believes that the commentors may have misconstrued the intent and scope of the proposed amendment. The Commission recognizes that a number of factors may affect the ability of a firm located in the United States to obtain information from abroad, including limitations on the availability of and access to information. The Commission also appreciates that the nature of corporate business relationships and affiliations may impact the ability of a firm to obtain such information. The Commission further understands that training, experience, and corporate position, and differences in product design, use and operating environment from standard practices in the United States may affect the ability of recipients abroad to appreciate the significance of information that may relate to products to be sold in the United States.

As commentors acknowledged in their written comments and in discussions with the Commission staff, the evaluation of compliance with the reporting obligations requires a case-by-case assessment of relevant facts, including those relating to the considerations identified above. The Consumer Product Safety Act provides the standard for this evaluation. In the context of reporting, section 20, 15 U.S.C. 2069, only permits the assessment of civil penalties against a party who ''knowingly'' commits a prohibited act by failing to furnish information required by section 15(b). Section 20(d) of the act defines ''knowingly'' as ''* * *'' (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.''

The existing interpretative rule also provides guidance, consistent with section 20, on how the Commission will analyze the facts of each case. In its discussion of the imputation of knowledge to a firm, 16 CFR 1115.11 notes that ''the Commission will deem a subject firm to know what a reasonable person acting in the circumstances in which the firm finds itself would know.'' The section goes on to explain that this imputation extends to knowledge that a firm could have obtained, had it exercised due care to ascertain the truth of complaints or other representations or conducted a reasonably expeditious investigation to evaluate the reportability of a death, grievous bodily injury, or other information.

Under section 115.11, the ''reasonable person'' standard applies to a firm's accountability for failure to obtain information that exists abroad. Considerations, such as those described above that may have affected the firm's ability to obtain or appreciate the significance of such information are certainly relevant to whether a firm acted reasonably in the circumstances. In view of the strictures in the statute and the existing interpretative regulation, the Commission believes that the commentors' fears that the Commission would not take such factors into account when assessing a firm's compliance with the reporting obligations are unfounded.

With respect to the second aspect of reporting—corrective action, as the June 7, 2001 final policy statement points out, information from abroad may be relevant to the core issue of whether some form of remedial action is necessary to protect American consumers from defective products that present a substantial risk of death or injury. The Commission hopes that all of the commentors to the proposed amendment accept that, in evaluating potential hazards, firms should attempt to obtain all reasonably available information, including that from abroad, in a timely manner to assure that they can reach reasoned decisions. Indeed, one of the three commentors expressly stated its agreement with this proposition. The Commission believes that this perspective is appropriate, since the welfare of their domestic customers should be of paramount concern to U.S. companies.

b. Two commentors believed that the proposed amendment differed materially from the final policy statement because, unlike the policy statement, the amendment did not

expressly note that firms had to have first obtained information from abroad for the obligation to evaluate the information to arise. The commentors feared that the omission signaled a possibility that, in evaluating a firm's compliance with the reporting requirements, the Commission might hold a firm responsible for not exercising due diligence to search for and obtain information that was available abroad, but that had not come to the firm's attention. The commentors therefore requested that the final amendment expressly state that a firm only needs to review information that it obtains.

The Commission believes that the amendment as proposed implicitly recognized that, in order to have an obligation to study and evaluate information, a firm must first obtain the information, or be reasonably expected to have obtained it because, for example, of the firm's relationship with or access to a firm or individual who possesses it. To alleviate the apparent confusion, however, the Commission has included in the final amendment an express statement that the information that should be evaluated includes information that a firm ''has obtained, or reasonably should have obtained in accordance with section 1115.11'' relating to product experience, etc. The Commission has not, however, limited this revision to cover only information that a firm has ''actually'' obtained, as one commentor requested. As is discussed *infra,* both the CPSA and the interpretative rule recognize that a firm need not have actually obtained information for obligations under section 15(b) to arise, if a reasonable person acting in the circumstances in which the firm finds itself would have obtained the information. Accordingly, the Commission believes that these provisions that address the imputation of knowledge to a firm dictate against further limiting the revision to the amendment. Adopting the restriction suggested by the commentor, on the other hand, could encourage firms to avoid seeking reasonably available information that could ultimately support the need for those firms to take corrective action.

c. Recipients of Information: One commentor stated that the rule should reflect that a firm ''obtains'' information only when an employee of the firm capable of appreciating the significance of the information actually receives it. Section 1115.11 of the interpretative rule already states that '' the Commission will deem a firm to have obtained reportable information when the information has been received by an official or employee who may reasonably be expected to be capable of appreciating the significance of the information.'' Because this provision already addresses the commentor's request, no additional revision to the final amendment is necessary.

d. Products Imported into the United States: Section 3(a)(4) of the CPSA, 15 U.S.C. 2051(a)(4) classifies importers as ''manufacturers'' under the act, while section 15(b) itself imposes reporting obligations on manufacturers, distributors, and retailers of consumer products. The Commission notes that foreign manufacturers export many products into the United States directly to importers, distributors, and retailers. In these circumstances, the Commission reminds importers, distributors, and retailers that they also have obligations under section 15 to conduct reasonable and diligent investigations, and to evaluate and report information about possible safety defects based on information they obtain or should reasonably obtain, including information from outside the United States. Retailers and distributors should refer to section 1115.13(b) of the interpretative rule for procedures for reporting.

Effective Date: This revision becomes effective 30 days after the date of publication of the revised final interpretative rule in the **Federal Register**.

List of Subjects in 16 CFR Part 1115

Administrative practice and procedure, Business and industry, Consumer protection, Reporting and recordkeeping requirements.

In accordance with the procedures of 5 U.S.C. 553 and under the authority of the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*, the Commission amends part 1115 of title 16, Chapter II, of the Code of Federal Regulations as follows:

PART 1115—SUBSTANTIAL PRODUCT HAZARD REPORTS

1. The authority citation for part 1115 continues to read as follows:

Authority: 15 U.S.C. 2061, 2064, 2065, 2066(a), 2068, 2070, 2071, 2073, 2076, 2079 and 2084.

2. Section 1115.12(f) introductory text is revised to read as follows:

§ 1115.12 Information which should be reported; evaluating substantial product hazard.

* * * * *

* * * (f) *Information which should be studied and evaluated.* Paragraphs (f)(1) through (7) of this section are examples of information which a subject firm should study and evaluate in order to determine whether it is obligated to report under section 15(b) of the CPSA. Such information may include information that a firm has obtained, or reasonably should have obtained in accordance with § 1115.11, about product use, experience, performance, design, or manufacture outside the United States that is relevant to products sold or distributed in the United States. All information should be evaluated to determine whether it suggests the existence of a noncompliance, a defect, or an unreasonable risk of serious injury or death:

* * * * *

Dated: October 24, 2001.

Todd Stevenson,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 01–27316 Filed 10–30–01; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

32 CFR Part 326

National Reconnaissance Office; NRO Privacy Act Program

AGENCY: National Reconnaissance Office, DOD.

ACTION: Final rule.

SUMMARY: The National Reconnaissance Office (NRO) is exempting two Privacy Act systems of records. The systems of records are QNRO–10, Inspector General Investigative Records and QNRO–15, Facility Security Files. The exemptions are intended to increase the value of the system of records for law enforcement purposes, to comply with prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the systems of records.

EFFECTIVE DATE: October 16, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Freimann at (703) 808–5029.

SUPPLEMENTARY INFORMATION: The proposed rules were previously published on August 17, 2001, at 66 FR 43138. No comments were received; therefore, the National Reconnaissance Office is adopting the rules as final.

Executive Order 12866, ''Regulatory Planning and Review''

The Director of Administration and Management, Office of the Secretary of Defense, hereby determines that Privacy Act rules for the Department of Defense are not significant rules. The rules do

not (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 this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR part 326

Privacy.

32 CFR part 326 is amended as follows:

PART 326—[AMENDED]

1. The authority citation for 32 CFR part 326 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

2. Section 326.17 is amended by adding paragraphs (f) and (g) to read as follows:

§ 326.17 Exemptions.

* * * * *

(f) *QNRO–10, Inspector General Investigative Files*—(1) Exemption: This system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws. Any portion of this system which falls within the provisions of 5 U.S.C. 552a(j)(2) may be exempt from the following subsections of 5 U.S.C. 552a (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g).

(2) Authority: 5 U.S.C. 552a(j)(2)

(3) Reasons

(i) From subsection (c)(3) because the release of accounting of disclosure would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by the cooperating agencies. This would greatly impede the NRO IG's criminal law enforcement.

(ii) From subsection (c)(4) and (d), because notification would alert a subject to the fact that an open investigation on that individual is taking place, and might weaken the on-going investigation, reveal investigative techniques, and place confidential informants in jeopardy.

(iii) From subsection (e)(1) because the nature of the criminal and/or civil investigative function creates unique problems in prescribing a specific parameter in a particular case with respect to what information is relevant or necessary. Also, due to NRO IG's close liaison and working relationships with other Federal, state, local and foreign country law enforcement agencies, information may be received which may relate to a case under the investigative jurisdiction of another agency. The maintenance of this information may be necessary to provide leads for appropriate law enforcement purposes and to establish patterns of activity, which may relate to the jurisdiction of other cooperating agencies.

(iv) From subsection (e)(2) because collecting information to the fullest extent possible directly from the subject individual may or may not be practical in a criminal and/or civil investigation.

(v) From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal and/or civil investigation. The effect would be somewhat adverse to established investigative methods and techniques.

(vi) From subsection (e)(4) (G) through (I) because this system of records is exempt from the access provisions of subsection (d).

(vii) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. (viii) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to law enforcement by revealing investigative techniques, procedures, and existence of confidential investigations.

(ix) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

(x) From subsection (g) because this system of records should be exempt to the extent that the civil remedies relate to provisions of 5 U.S.C. 552a from which this rule exempts the system.

(4) Exemptions

(i) Investigative material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) and/or (k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(5) Authority

5 U.S.C. 552a(k)(2) and (k)(5).

(6) Reasons

(i) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutable interest by the NRO or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(ii) From subsections (d) and (f) because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NRO will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

(vi) Consistent with the legislative purpose of the Privacy Act of 1974, the NRO will grant access to nonexempt material in the records being maintained. Disclosure will be governed by NRO's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal or civil violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

(g) QNRO–15, Facility Security Files.

(1) Exemptions

(i) Investigative material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) and/or (k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(2) Authority

5 U.S.C. 552a(k)(2) and (k)(5).

(3) Reasons

(i) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutable interest by the NRO or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(ii) From subsections (d)(1) through (d)(4), and (f) because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence;

enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NRO will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

(vi) Consistent with the legislative purpose of the Privacy Act of 1974, the NRO will grant access to nonexempt material in the records being maintained. Disclosure will be governed by NRO's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal or civil violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered; the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

Dated: October 19, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–27185 Filed 10–30–01; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

[Secretary of the Navy Instruction 5211.5]

Privacy Act; Implementation

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is exempting those records contained in N05211–1, Privacy Act Files and Tracking System, and N05720–1, FOIA Request Files and Tracking System, when an exemption has been previously claimed for the records in 'other' systems of records. The exemptions are intended to preserve the exempt status of records when the purposes underlying the exemption for the original records are still valid and necessary to protect the contents of the records.

EFFECTIVE DATE: October 16, 2001.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The proposed rule was published on August 17, 2001, at 66 FR 43141. No comments were received therefore the Navy is adopting the rules as final.

Executive Order 12866, ''Regulatory Planning and Review''

The Director of Administration and Management, Office of the Secretary of Defense, hereby determines that Privacy Act rules for the Department of Defense are not significant rules. The rules do not: (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 this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974. Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''. The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR Part 701 Privacy.

32 CFR part 701 is amended as follows;

PART 701—[AMENDED]

1. The authority citation for 32 CFR part 701, Subpart G continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 701.118, is amended by adding paragraphs (v) and (w) as follows:

§ 701.118 Exemptions for specific Navy record systems.

* * * * *

(v) *System identifier and name:*

(1) N05211–1, Privacy Act Files and Tracking System

(2) Exemption

During the processing of a Privacy Act request (which may include access requests, amendment requests, and requests for review for initial denials of such requests), exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, the Department of the Navy hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(3) Authority

5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(4) Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, and to preserve the confidentiality and integrity of Federal evaluation materials. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

(w) System identifier and name

(1) N05720–1, FOIA Request Files and Tracking System

(2) Exemption

During the processing of a Freedom of Information Act request, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, the Department of the Navy hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(3) Authority:

5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(4) Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, and to preserve the confidentiality and integrity of Federal evaluation materials. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

* * * * *

Dated: October 19, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–27184 Filed 10–30–01; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806b

[Air Force Instruction 37–132]

Privacy Act; Implementation

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is revising two existing exemption rules for the Privacy Act systems of records notices F031 AF SP E, Security Forces Management Information System (SFMIS) and F44 AF SG Q, Family Advocacy Program Records.

EFFECTIVE DATE: October 22, 2001.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 588–0561 or DSN 425–0561.

SUPPLEMENTARY INFORMATION: The proposed rules were published on August 21, 2001, at 66 FR 43820. No comments were received therefore the Department of the Air Force is adopting the rules as final.

Executive Order 12866, ''Regulatory Planning and Review''

The Director of Administration and Management, Office of the Secretary of Defense, hereby determines that Privacy Act rules for the Department of Defense are not significant rules. The rules do not: (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 this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6).

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not

significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR Part 806b

Privacy.

32 CFR part 806b is amended as follows;

PART 806b—AIR FORCE PRIVACY ACT PROGRAM

1. The authority citation for 32 CFR part 806b continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Appendix C to section 806b is amended by revising paragraph a.(3) and paragraph b.(6) to read as follows:

Appendix C to Part 806b—General and Specific Exemptions

a. *General exemptions.** * *

(3) *System identifier and name:* F031 AF SP E, Security Forces Management Information System (SFMIS).

(i) *Exemption:* Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws. Portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) from the following subsections of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (e)(5), (e)(8), (f), and (g).

(ii) *Authority:* 5 U.S.C. 552a(j)(2).

(iii) *Reasons:* (A) To protect ongoing investigations and to protect from access criminal investigation information contained in this record system, so as not to jeopardize any subsequent judicial or administrative process taken as a result of information contained in the file.

(B) From subsection (c)(3) because the release of the disclosure accounting, for disclosures pursuant to the routine uses published for this system, would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(C) From subsection (c)(4) because an exemption is being claimed for subsection (d), this subsection will not be applicable.

(D) From subsection (d) because access to the records contained in this system would inform the subject of an investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection, and would present a serious impediment to law enforcement.

(E) From subsection (e)(4)(H) because this system of records is exempt from individual access pursuant to subsection (j) of the Privacy Act of 1974.

(F) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

(G) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Air Force will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Air Force's Privacy Instruction, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis

b. * * *

(6) *System identifier and name:* F44 AF SG Q, Family Advocacy Program Records.

(i) *Exemption:* (A) Investigative material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identify of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(B) Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(C) Therefore, portions of the system of records may be exempt pursuant to 5 U.S.C. 552a(c)(3) and (d), but only to the extent that disclosure would reveal the identity of a confidential source.

(ii) *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5).

(iii) *Reasons:* From subsections (c)(3) and (d) because the exemption is needed to encourage those who know of exceptional medical or educational conditions or family maltreatments to come forward by protecting their identities and to protect such sources from embarrassment or recriminations, as well as to protect their right to privacy. It is essential that the identities of all individuals who furnish information under an express promise of confidentiality be protected. Granting individuals access to information relating to criminal and civil law enforcement, as well as the release of certain disclosure accounting, could interfere with ongoing investigations and the orderly administration of justice, in that it could result in the concealment, alteration, destruction, or fabrication of information; could hamper the identification of offenders or alleged offenders and the disposition of charges; and could jeopardize the safety and well being of parents and their children. Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment and Federal contracts, and that was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

* * * * *

Dated: October 23, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–27186 Filed 10–30–01; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–01–127]

Drawbridge Operation Regulations; SR 84 Bridge, South Fork of the New River, Mile 4.4, Ft. Lauderdale, Broward County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the SR 84 Bridge across the South Fork of the New River, mile 4.4, Ft. Lauderdale, Broward County, Florida. This deviation allows the drawbridge owner or operator to not open the Bridge from October 29, 2001 to November 3, 2001. This temporary deviation is required to allow the bridge owner to safely complete repairs of the Bridge.

DATES: This deviation is effective from October 29, 2001 to November 3, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Section at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The SR 84 Bridge across the South Fork of the New River at Ft. Lauderdale, Broward County, Florida is a single leaf bridge with a vertical clearance of 21.0 feet above mean high water (MHW) measured at the fenders in the closed position with a horizontal clearance of 40 feet. On October 2, 2001, the Florida Department of Transportation, the drawbridge owner, requested a deviation from the current operating regulation in 33 CFR 117.315(b) which requires the draw of the SR 84 Bridge, mile 4.4 at Fort Lauderdale, to open on signal if at least 24 hours notice is given. Public vessels of the Unites States, regularly scheduled cruise vessels, tugs with tows, and vessels in distress shall be passed through the draw as soon as possible. This temporary deviation was requested to allow necessary repairs to the drawbridge in a critical time sensitive manner.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.315(b) to complete repairs to the drawbridge. Under this deviation, the SR 84 Bridge need not open from October 29, 2001 through November 3, 2001, except in the event of an emergency with 24 hours advance notification.

Dated: October 25, 2001.

Greg E. Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 01–27386 Filed 10–30–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Emergency Closures and Adjustments—Kuskokwim River Drainage

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Emergency closures and adjustments.

SUMMARY: This provides notice of the Federal Subsistence Board's in-season management actions to protect chinook and chum salmon escapement in the Kuskokwim River drainage. These regulatory adjustments and the closures provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on February 13, 2001. Those regulations established seasons, harvest limits, methods, and means relating to the taking of fish and shellfish for subsistence uses during the 2001 regulatory year.

DATES: The fourth Kuskokwim River drainage closure and regulatory adjustment was effective June 17, 2001, through June 19, 2001, for Districts 1 and 2. The fifth Kuskokwim River drainage closure and regulatory adjustment was effective June 24, 2001, through June 26, 2001, for Districts 1 and 2. The sixth Kuskokwim River drainage closure and regulatory adjustment was effective July 1, 2001, through July 10, 2001, for Districts 1 and 2. The seventh Kuskokwim River drainage closure and regulatory adjustment was effective July 11, 2001, through July 31, 2001, for Districts 1 and 2. The eighth Kuskokwim River drainage closure and regulatory adjustment was effective July 27, 2001, through July 31, 2001, for Districts 1 and 2.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Subsistence Program Manager, USDA—Forest Service, Alaska Region, telephone (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. The Departments administer Title VIII through regulations at Title 50, Part 100 and Title 36, Part 242 of the Code of Federal Regulations (CFR). Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual Subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2001 fishing seasons, harvest limits, and methods and means were published on February 13, 2001, (66 FR 10142). Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Fisheries (BOF), manages sport, commercial, personal use, and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

These emergency closures (restricted subsistence fishing schedules) and adjustments were necessary because of predictions of extremely weak returns of chinook and chum salmon in the Kuskokwim River drainage. These

emergency actions are authorized and in accordance with 50 CFR 100.19(d) and 36 CFR 242.19(d).

Kuskokwim River Drainage

The Federal Subsistence Board, ADF&G, and subsistence users were very concerned that not enough chinook and chum salmon would be returning to the Kuskokwim River and its tributaries in 2001 to meet both spawning escapement objectives and subsistence needs. Adequate spawning escapement is necessary to assure sustaining the population. Last year, subsistence salmon harvests in the Kuskokwim River were among the lowest in the past 12 years. Returns of chinook and chum salmon have been extremely poor over the last 3 years. The expected low runs and poor spawning escapements in 2001 could jeopardize the viability of future returns. Federal and State biologists anticipated that the 2001 salmon returns would be critically low, and subsistence needs in some areas may not be met.

The BOF met in January 2001 to review the status of salmon returns on the Kuskokwim River and identified Kuskokwim River chinook and chum salmon as stocks of concern. The BOF then took action to establish a salmon rebuilding plan for the Kuskokwim River. In addition, ADF&G indicated that no commercial fishing periods were being considered for June and July for the Kuskokwim River, that they intended to limit the sport fishery to one salmon per person per day, and that they would close the sport fishery for salmon in the entire Kuskokwim River drainage if the runs were weaker than expected. The ADF&G and U.S. Fish & Wildlife Service personnel conducted public meetings, produced information posters, and published news articles to let the local users know about concerns regarding the expected low salmon returns and advise them regarding the restrictions and closures to protect spawning escapement.

On May 10, 2001, in public forum and after hearing testimony, the Federal Subsistence Board adopted the first emergency action closing the chinook and chum salmon fishery on Federal waters in the Kuskokwim River drainage to all users except Federally-qualified subsistence users. That closure was for 60 days (the maximum amount of time allowed under 50 CFR 100.19(d) and 36 CFR 242.19(d)) from June 1, 2001, to July 30, 2001 (66 FR 32750, June 18, 2001). This is the period of the majority of chinook and chum salmon run passage through the river. The effect of that action was to close the sport take for chinook and chum salmon in the Kuskokwim River drainage within the boundaries of the Yukon Delta National Wildlife Refuge, within or adjacent to Denali National Park and Preserve, and within or adjacent to Lake Clark National Park and Preserve and to close subsistence harvest on those same waters by any residents living outside the Kuskokwim Fishery Management Area. Additionally, any chinook or summer chum salmon taken incidentally in another fishery must be released immediately. In other words, if you catch a chinook or chum salmon in Federal waters while fishing for sheefish or pike, you must immediately release it. Although commercial fisheries were closed and ADF&G indicated that an opening in June or July was highly unlikely, this action would prevent any such opening from occurring on Federal waters. Should the runs have come in stronger than expected with spawning escapements and subsistence needs being met, the delegated field manager, as authorized by the Federal Subsistence Board, could have removed this restriction.

On June 1, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers and the Kuskokwim River Salmon Management Working Group (KRSMWG), initiated a second closure on Federal waters for the period from June 3, 2001, through June 5, 2001, in the Kuskokwim Area District 1 for the subsistence gillnet and fishwheel fisheries (66 FR 33642, June 25, 2001). This reduced the subsistence salmon fishing schedule to four days that week. In Kuskokwim Area District 1, fishing for whitefish, suckers and other non-salmon species during closed salmon fishing periods continued to be allowed seven days per week with gillnets of 4 inches or less stretch mesh that are 60 feet or less in length. Salmon caught incidentally in those nets could be kept for subsistence uses.

On June 8, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers and the KRSMWG initiated a third closure on Federal waters for the period from June 10, 2001, through June 12, 2001, in the Kuskokwim Area Districts 1 and 2 for the subsistence gillnet and fishwheel fisheries (66 FR 33642, June 25, 2001). In Kuskokwim Area District 1 and 2, fishing for whitefish, suckers and other non-salmon species during closed salmon fishing periods continued to be allowed seven days per week with gillnets of 4 inches or less stretch mesh that are 60 feet or less in length. Salmon caught incidentally in those nets could be kept for subsistence uses.

On June 14, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers and the KRSMWG initiated a fourth closure on Federal waters for the period from June 17, 2001, through June 19, 2001, in the Kuskokwim Aera Districts 1and 2 for the subsistence gillnet and fishwheel fisheries. In Kuskokwim Area District 1 and 2, fishing for whitefish, suckers and other non-salmon species during closed salmon fishing periods continued to be allowed seven days per week with gillnets of 4 inches or less stretch mesh that are 60 feet or less in length. Salmon caught incidentally in those nets could be kept for subsistence uses.

On June 22, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers and the KRSMWG initiated a fifth closure on Federal waters for the period from June 24, 2001, through June 26, 2001, in the Kuskokwim Area Districts 1and 2 for the subsistence gillnet and fishwheel fisheries. This action was necessary due to continued low returns. In Kuskokwim Area District 1 and 2, fishing for whitefish, suckers and other non-salmon species during closed salmon fishing periods continued to be allowed seven days per week with gillnets of 4 inches or less stretch mesh that are 60 feet or less in length. Salmon caught incidentally in those nets could be kept for subsistence uses.

On June 28, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers and the KRSMWG initiated a sixth closure (Sunday through Tuesday of each week) on Federal waters for the period from July 1, 2001, through July 10, 2001, in the Kuskokwim Area Districts 1 and 2 for the subsistence gillnet and fishwheel fisheries. This action was necessary due to continued low returns. In Kuskokwim Area District 1 and 2, fishing for whitefish, suckers and other non-salmon species during closed salmon fishing periods continued to be allowed seven days per week with gillnets of 4 inches or less stretch mesh that are 60 feet or less in length. Salmon caught incidentally in those nets could be kept for subsistence uses.

On July 10, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers and the KRSMWG initiated a seventh closure (Friday through Tuesday of each week) on Federal waters for the period from July 11, 2001, through July 10, 2001, in the Kuskokwim Area Districts 1and 2 for the subsistence gillnet and fishwheel

fisheries. This action was necessary due to continued low returns. In Kuskokwim Area District 1 and 2, fishing for whitefish, suckers and other non-salmon species during closed salmon fishing periods continued to be allowed seven days per week with gillnets of 4 inches or less stretch mesh that are 60 feet or less in length. Salmon caught incidentally in those nets could be kept for subsistence uses.

On July 25, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers and the KRSMWG initiated an eighth action (establishing four days of each week) on Federal waters for the period from July 27, 2001, through July 31, 2001, in the Kuskokwim Area Districts 1and 2 for the subsistence gillnet and fishwheel fisheries. In Kuskokwim Area District 1 and 2, fishing for whitefish, suckers and other non-salmon species during closed salmon fishing periods continued to be allowed seven days per week with gillnets of 4 inches or less stretch mesh that are 60 feet or less in length. Salmon caught incidentally in those nets could be kept for subsistence uses.

These regulatory actions were necessary to assure the continued viability of the chinook and chum salmon runs and provide a long-term subsistence priority during a period of limited harvest opportunity. These closures and adjustments brought the Federal subsistence fishing regulations in line with the similar ADF&G action for unified management and minimized confusion under the dual management system.

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for these emergency closures are impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate conservation measures could seriously affect the continued viability of fish populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of these actions and pursuant to 5 U.S.C. 553(d) to make this rule effective as indicated in the **DATES** section.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999, (64 FR 1276.)

Compliance with Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

The adjustment and emergency closures do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995.

Other Requirements

The adjustment and emergency closures have been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as guides and boat, fishing tackle, and gasoline dealers. The number of small entities affected is unknown; but, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Departments certify that the adjustment and emergency closures will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the adjustment and emergency closures have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 et seq., that the adjustment and emergency closures will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the adjustment and emergency closures meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the adjustment and emergency closures do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over fish and wildlife resources on Federal lands. Cooperative salmon run assessment efforts with ADF&G will continue.

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply,

distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

Drafting Information

William Knauer drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Bob Gerhard, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: October 4, 2001.

Kenneth E. Thompson,

Subsistence Program Leader, USDA-Forest Service.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

[FR Doc. 01–27341 Filed 10–30–01; 8:45 am]

BILLING CODE 3410–11–P and 4310–55–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Emergency Closures—Redoubt and Salmon Lakes Drainages

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Emergency closures.

SUMMARY: This provides notice of the Federal Subsistence Board's in-season management actions to protect sockeye salmon escapement in the Redoubt and Salmon Lakes drainages. These regulatory adjustments and the closures provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on February 13, 2001. Those regulations established seasons, harvest limits, methods, and means relating to the taking of fish and shellfish for subsistence uses during the 2001 regulatory year.

DATES: This closure was effective July 13, 2001, through August 31, 2001.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Subsistence Program Manager, USDA—Forest Service, Alaska Region, telephone (907) 786–3592.

SUPPLEMENTARY INFORMATION

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. The Departments administer Title VIII through regulations at Title 50, part 100 and Title 36, part 242 of the Code of Federal Regulations (CFR). Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual Subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2001 fishing seasons, harvest limits, and methods and means were published on February 13, 2001, (66 FR 10142). Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Fisheries (BOF), manages sport, commercial, personal use, and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

These emergency closures were necessary because of predictions of extremely weak returns of sockeye salmon in the Redoubt and Salmon Lakes drainages. These emergency actions are authorized and in accordance with 50 CFR 100.19(d) and 36 CFR 242.19(d).

Redoubt Lake Drainage

Since the projected escapement was well below desirable levels for Redoubt Lake, the system was closed to provide for spawning escapement needs. The total return to July 11, 2001, was 1,089 sockeye. Usually 16% of the run returned to the lake by that time. The projected escapement is 7,571 fish for the 2001 season. This projection represents 21% of the average escapement of 36,000 sockeye during the period 1989–1999

Salmon Lake Drainage

Salmon Lake was closed since returns were low, and to avoid excessive harvest effort for this relatively small sockeye population. Closure of the nearby Redoubt Lake system could displace harvest effort in the Sitka Sound area to Salmon Lake. The total escapement to July 11, 2001, was 320 at Salmon Lake. Past subsistence harvest for Salmon Lake has ranged from zero

to 353 sockeye salmon since monitoring began in 1985.

On July 11, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers initiated a sockeye salmon closure in the Redoubt and Salmon Lakes drainages for the period from July 13, 2001, through August 31, 2001. This action was necessary due to low sockeye returns.

This regulatory action was necessary to assure the continued viability of the sockeye salmon runs and provide a long-term subsistence priority during a period of limited harvest opportunity. This closure brought the Federal subsistence fishing regulations in line with the similar ADF&G action for unified management and minimized confusion under the dual management system.

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for this emergency closure is impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate conservation measures could seriously affect the continued viability of fish populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of this action and pursuant to 5 U.S.C. 553(d) to make this effective as indicated in the **DATES** section.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999, (64 FR 1276).

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Paperwork Reduction Act

The emergency closure does not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995.

Other Requirements

The emergency closure has been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as boat, fishing tackle, and gasoline dealers. The number of small entities affected is unknown; but, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Departments certify that the emergency closure will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the emergency closure has no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the emergency closure will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the emergency closure meets the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the emergency closure does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over fish and wildlife resources on Federal lands. Cooperative salmon run assessment efforts with ADF&G will continue.

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this action is not expected to significantly affect energy supply, distribution, or use, it is not a significant energy action and no Statement of Energy Effects is required.

Drafting Information

William Knauer drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Bob Gerhard, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: October 4, 2001.

Kenneth E. Thompson,

Subsistence Program Leader, USDA-Forest Service.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

[FR Doc. 01–27342 Filed 10–30–01; 8:45 am]

BILLING CODE 3410–11–P and 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4176; FRL–7089–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Eighteen Individual Sources in the Philadelphia-Wilmington-Trenton Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for eighteen major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X). These sources are located in the Philadelphia-Wilmington-Trenton ozone nonattainment area (the Philadelphia area). EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

EFFECTIVE DATE: This final rule is effective on November 15, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia Spink, (215) 814–2104 or by e-mail at spink.marcia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On September 20, 1995, April 16, 1996, May 2, 1996, July 2, 1997, July 24, 1998, December 7, 1998, April 9, 1999, and April 20, 1999, PADEP submitted revisions to the Pennsylvania SIP which establish and impose RACT for several sources of VOC and/or NO_X. This rulemaking pertains to eighteen of those sources. The remaining sources are or have been the subject of separate rulemakings. The Commonwealth's submittals consist of plan approvals and operating permits which impose VOC and/or NO_X RACT requirements for each source. These sources are all located in the Philadelphia area and include: Amerada Hess Corp.; Amoco Oil Company; Cartex Corporation; Exxon Company, USA; GATX Terminals Corporation; Hatfield Quality Meats, Incorporated; J. L. Clark, Incorporated; Johnson Matthey, Incorporated; Kurz Hastings, Incorporated; Lawrence McFadden Company; Philadelphia Baking Company; Philadelphia Gas Works; PPG Industries, Incorporated; SmithKline Beecham Pharmaceuticals; Teva Pharmaceuticals, USA; The Philadelphian Condominium Building; Warner Company; and Webcraft Technologies, Incorporated.

On August 20, 2001, EPA published a direct final rule (66 FR 43502) and a companion notice of proposed rulemaking (66 FR 43551) to approve these SIP revisions. On September 7, 2001, we received adverse comments on our direct final rule from the Citizens for Pennsylvania's Future (PennFuture). On September 26, 2001, (66 FR 49107), we published a timely withdrawal in the **Federal Register** informing the public that the direct final rule did not take effect. We indicated in our August 20, 2001 direct final rulemaking that if we received adverse comments, EPA would address all public comments in a subsequent final rule based on the proposed rule (66 FR 43551). This is that subsequent final rule. A description of the RACT determination(s) made for each source was provided in the August 20, 2001 direct final rule and will not be restated here. A summary of the comments submitted by PennFuture germane to this final rulemaking and EPA's responses are provided in Section II of this document.

II. Public Comments and Responses

The Citizens for Pennsylvania's Future (PennFuture) submitted adverse comments on the proposed rule published by EPA in the **Federal Register** on August 20, 2001 to approve case-by-case RACT SIP submissions from the Commonwealth for NO_X and or VOC sources located in the Philadelphia area. A summary of those comments and EPA's responses are provided below.

A. Comment: PennFuture comments that EPA has conducted no independent technical review, and has prepared no technical support document to survey potential control technologies, determine the capital and operating costs of different options, and rank these options in total and marginal cost per ton of NO_X and VOC controlled. In citing the definition of the term ''RACT,'' and the Strelow Memorandum [Roger Strelow, Assistant Administrator for Air and Waste Management, EPA, December 9, 1976, cited in *Michigan* v. *Thomas,* 805 F.2d 176, 180 (6th Cir. 1986) and at 62 FR 43134, 43136 (1997)], PennFuture appears to comment that in every situation, RACT must include an emission rate. PennFuture asserts that EPA should conduct its own RACT evaluation for each source, or at a minimum document a step-by-step review demonstrating the adequacy of state evaluations, to ensure that appropriate control technology is applied. The commenter also believes that EPA's failure to conduct its own independent review of control technologies has resulted in our proposing to approve some RACT determinations that fail to meet the terms of EPA's own RACT standard.

Response: On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of Pennsylvania's generic RACT regulations, 25 PA Code Chapters 121 and 129, thereby approving the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. Subsection 129.91, *Control of major sources of NO_X and VOCs,* requires subject facilities to submit a RACT plan proposal to both the Pennsylvania Department of Environmental Protection (DEP) and to EPA Region III by July 15, 1994 in accordance with subsection 129.92, entitled, *RACT proposal requirements.* Under subsection 129.92, that proposal is to include, among other information: (1) A list of each subject source at the facility; (2) The size or capacity of each affected source, and the types of fuel combusted, and the types and amounts of materials processed or produced at each source; (3) A physical description of each source and its operating characteristics; (4) Estimates of potential and actual emissions from each affected source with supporting documentation; (5) A RACT analysis which meets the requirements of subsection 129.92 (b), including technical and economic support documentation for each affected

source; (6) A schedule for implementation as expeditiously as practicable but not later than May 15, 1995; (7) The testing, monitoring, recordkeeping and reporting procedures proposed to demonstrate compliance with RACT; and (8) any additional information requested by the DEP necessary to evaluate the RACT proposal. Under subsection 129.91, the DEP will approve, deny or modify each RACT proposal, and submit each RACT determination to EPA for approval as a SIP revision.

The conditional nature of EPA's March 23, 1998 conditional limited approval did not impose any conditions pertaining to the regulation's procedures for the submittal of RACT plans and analyses by subject sources and approval of case-by-case RACT determinations by the DEP. Rather, EPA stated that ''* * * RACT rules *may not merely be procedural rules* (emphasis added) that require the source and the State to later agree to the appropriate level of control; rather the rules must identify the appropriate level of control for source categories or individual sources.''

On May 3, 2001 (66 FR 22123), EPA published a rulemaking determining that Pennsylvania had satisfied the conditions imposed in its conditional limited approval. In that rulemaking, EPA removed the conditional status of its approval of the Commonwealth's generic VOC and NO_X RACT regulations on a statewide basis. EPA received no public comments on its action and that final rule removing the conditional status of Pennsylvania's VOC and NO_X RACT regulations became effective on June 18, 2001. As of that time, Pennsylvania's generic VOC and NO_X RACT regulations retained a limited approval status. On September 6, 2001 (66 FR 46571), EPA proposed to remove the limited nature of its approval of Pennsylvania's generic RACT regulation in the Philadelphia area. EPA received no comments on that proposal. Final action converting the limited approval to full approval shall occur once EPA has completed rulemaking to approve either (1) the case-by-case RACT proposals for all sources subject to the RACT requirements currently known in the Philadelphia area *or* (2) for a sufficient number of sources such that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking (63 FR 13789).

EPA agrees that it has an obligation to review the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by Commonwealth to verify and determine if they are consistent with the RACT requirements of the Act and any relevant EPA guidance. EPA does not agree, however, that this obligation to review the case-by-case RACT determinations submitted by Pennsylvania necessarily extends to our performing our own RACT analyses, independent of the sources' RACT plans/analyses (included as part of the case-by-case RACT SIP revisions) or the Commonwealth's analyses. EPA first reviews this submission to ensure that the source and the Commonwealth followed the SIP-approved generic rule when applying for and imposing RACT for a specific source. Then EPA performs a thorough review of the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then EPA may add additional EPA-generated analyses to the record.

While RACT, as defined for an individual source or source category, often does specify an emission rate, such is not always the case. EPA has issued Control Technique Guidelines (CTGs) which states are to use as guidance in development of their RACT determinations/rules for certain sources or source categories. Not every CTG issued by EPA includes an emission rate. There are several examples of CTGs issued by EPA wherein equipment standards and/or work practice standards alone are provided as RACT guidance for all or part of the processes covered. Such examples include the CTGs issued for Bulk gasoline plants, Gasoline service stations—Stage I, Petroleum Storage in Fixed-roof tanks, Petroleum refinery processes, Solvent metal cleaning, Pharmaceutical products, External Floating roof tanks and Synthetic Organic Chemical Manufacturing (SOCMI)/polymer manufacturing. (The publication numbers for these CTG documents may be found at *http://www.epa.gov/ttn/catc/dir1/ctg.txt*).

EPA disagrees with PennFuture's general comment that our failure to conduct our own independent review of control technologies for every case-by-case RACT determination conducted by the Commonwealth has resulted in our proposing to approve some RACT determinations that fail to meet the terms of our own RACT standard. PennFuture submitted comments specific to the case-by-case RACT determinations for two located in the Philadelphia area, namely for Kurz-Hastings and GATX Terminals Corporation. EPA summarizes those comments and provides responses in the final rule pertaining to those sources.

B. Comment: PennFuture comments that when EPA reviewed Pennsylvania's RACT program, it noted that Pennsylvania coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour ''are some of the largest NO_X emitting sources in the Commonwealth and in the Northeast United States'' [63 FR 13789, 13791 (1998)] and as such should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93) to guarantee that sources would achieve quantifiable emissions reductions under the RACT program. PennFuture goes on to comment that because EPA has not conducted and documented a technical review of Pennsylvania case-by-case RACT submissions, EPA has not demonstrated that these large boilers are subject to ''numeric emission limitations'' under RACT. EPA must conduct a thorough RACT evaluation or review for each such source, and must document the application of numeric emission limits and quantifiable reductions for each coal-fired boiler with a rated heat input of over 100 million Btu per hour.

Response: Circumstances may exist wherein a state could justify otherwise, however, in general, EPA agrees with PennFuture that coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93).

As provided in the response found in II. A, EPA does not agree that it must conduct its own technical analysis of each of the case-by-case RACT determinations submitted for each RACT source in order to document that its RACT requirements include numeric emission limitations. That determination can be made by EPA when it reviews the plan approval, consent order, or permit issued to such a source as submitted by the Commonwealth as SIP revision. PennFuture's comment did not point to a specific instance where a RACT plan approval, consent order or permit imposing RACT on a coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour did, in fact, lack a numerical emission limitation(s). Nonetheless, pursuant to PennFuture's comment, EPA has re-examined all of the case-by-case RACT SIP submissions made by the Commonwealth for such sources located in the Philadelphia area. That re-

examination, combined with information provided by the Commonwealth, indicates that each case-by-case RACT plan approval, consent order and/or permit for each coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour includes a numeric emission limitation. A listing of each source, its plan approval, consent order and/or permit number and its numerical emission limitation has been placed in the Administrative Records for the case-by-case RACT rulemakings for the Philadelphia area.

C. Comment: PennFuture asserts that the Commonwealth has not adopted and submitted category RACT rules for all VOC source categories for which federal control technique guidelines (CTGs) have been issued. The commenter refers to Appendix 1 of the Technical Support Document (dated May 14, 2001), prepared by EPA in support of its proposed rule to redesignate the Pittsburgh-Beaver Valley Ozone Nonattainment Area (66 FR 29270), to assert that EPA has failed to require the Commonwealth to submit VOC RACT rules for certain categories of sources. PennFuture specifically names source categories such as equipment leaks from natural gas/gas processing plants, coke oven batteries, iron and steel foundries, and publically owned treatment works and asserts that the Commonwealth has neglected a statutory requirement to adopt category RACT regulations for these and 14 other unnamed VOC source categories.

Response: EPA has not issued CTGs for coke oven batteries, iron and steel foundries and publically owned treatment works. The Appendix 1, referred to by the commenter, lists CTG covered categories as well as source categories taken from two STAPPA/ALAPCO documents entitled, ''Meeting the 15-Percent Rate-of-Progress Requirement Under the Clean Air Act—A Menu of Options'' (September 1993) and ''Controlling Nitrogen Oxides Under the Clean Air Act—A Menu of Options'' (July 1994). The categories referenced by PennFuture are not VOC *categories* for which EPA has issued CTGs, but were included in Appendix A as examples of some of the types of sources that could be subject to Pennsylvania's generic RACT regulations. The Commonwealth is under no statutory obligation to adopt RACT rules for source *categories* for which EPA has not issued a CTG. In fact, CTGs do not exist for all but one of the categories to which the commenter explicitly refers.

The Act requires that states adopt regulations to impose RACT for ''major sources of VOC,'' located within those areas of a state where RACT applies under Part D of the Act [182(b)(2)(C)]. This is referred to as the non-CTG VOC RACT requirement. Moreover, EPA disagrees that there is a statutory mandate that a state adopt a source category RACT regulation even for a source category where EPA has issued a CTG. There are two statutory provisions that address RACT for sources covered by a CTG. One provides that states must adopt RACT for ''any category of VOC sources'' covered by a CTG issued prior to November 15, 1990 [182(b)(2)(A)]. The other provides that states must adopt VOC RACT for all ''VOC sources'' covered by a CTG issued after November 15, 1990 [182(b)(2)(B)]. EPA has long interpreted the statutory RACT requirement to be met either by adoption of category-specific rules or by source-specific rules for each source within a category. When initially established, RACT was clearly defined as a case-by-case determination, but EPA provided CTG's to simplify the process for states such that they would not be required to adopt hundreds or thousands of individual rules. See Strelow Memorandum dated December 9, 1976 and 44 FR 53761, September 17, 1979. EPA does not believe that Congress' use of ''source category'' in one provision of section 182(b)(2) was intended to preclude the adoption of source-specific rules.

Thus, where CTG-subject sources are located within those areas of a state where RACT applies under Part D of the Act, the state is obligated to impose RACT for the same universe of sources covered by the CTG. However, that obligation is not required to be met by the adoption and submittal of a source category RACT rule. A state may, instead, opt to impose RACT for such sources in permits, plan approvals, consent orders or in any other state enforceable document and submit those documents to EPA for approval as source-specific SIP revisions. This option has been exercised by many states, and happens most commonly when only a few CTG-subject sources are located in the state. The source-specific approach is generally employed to avoid what can be a lengthy and resource-intensive state rule adoption process for only a few sources that may have different needs and considerations that must be taken into account.

As stated earlier, there is one source category explicitly included in PennFuture's comment for which EPA has issued a CTG, namely natural gas/gas processing plants. The Commonwealth made a negative declaration to EPA on April 13, 1993, stating that as of that date there were no applicable sources in this category. Therefore, the Commonwealth did not adopt a category RACT regulation for natural gas/gas processing plants.

D. Comment: PennFuture cites EPA correspondence [letter from Marcia Spink, EPA, to James Salvaggio, DEP, December 15, 1993] to the Commonwealth which states that establishing any dollar figure in RACT guidance will not provide for the ''automatic'' selection or rejection of a control technology or emission limitation as RACT for a source or source category. With regard to the Pennsylvania DEP's intent to finalize a NO_X RACT Guidance Document for implementation of its NO_X RACT regulation, EPA's 1993 letter stated that the document could improperly be used to establish ''bright line'' or ''cook-book'' approaches, particularly for a regulation applicable to many source categories and suggested that if the guidance document must include dollar figures/ton, it provide approximate ranges by source category. PennFuture comments that DEP issued its ''Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions,'' March 11, 1994, and on pp. 8–9 states that the acceptable threshold is $1500 per ton, and that this figure applies to ''all source categories.'' PennFuture notes that EPA later objected to the $1500 per ton methodology as ''not generically acceptable to EPA'' [letter from Thomas Maslany, EPA, to James Salvaggio, DEP, June 24, 1997] and further stated in a **Federal Register** notice that a ''dollar per ton threshold'' is ''inconsistent with the definition of RACT'' [62 FR 43134, 37–38 (1997)].

PennFuture comments that EPA is proposing to approve RACT determinations based on a cost per ton method that EPA had previously rejected, and according to its own clearly expressed standard, EPA must not approve RACT determinations by Pennsylvania DEP that apply this $1500 per ton threshold. PennFuture asserts EPA must reject all Pennsylvania RACT determinations applying the standard of $1500 per ton, or any other ''bright line'' approach, as failing to follow EPA procedures established for Pennsylvania RACT.

Response: EPA still takes the position that a single cost per ton dollar figure may not, in and of itself, form the basis for rejecting a control technology, equipment standard, or work practice standard as RACT. The Technical Support Document prepared by EPA in support of its March 23, 1998 rulemaking [63 FR 13789] clearly

indicates that the Commonwealth's document, ''Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions.'' March 11, 1994, had not been included as part of the SIP submission of the Commonwealth's generic regulation and, therefore, had not been approved by EPA. EPA further notes that the Administrative Record of the March 23, 1998 rulemaking [63 FR 13789], in addition to the correspondence cited by PennFuture, also includes correspondence from DEP to EPA [letter from James Salvaggio, DEP to David Arnold, EPA, September 10, 1997] stating that DEP's RACT guidance document does not establish a maximum dollar per ton for determining the cost effectiveness for RACT determinations and notes that the DEP's $1500 per ton cost effectiveness is a target value and not an absolute maximum. For example, in its analyses of the cost effectiveness of RACT control options submitted by DEP as part of the case-by-case SIP revision for Peoples Natural Gas (PNG) Valley Compressor Station's turbo charged lean burn IC engine (see the Administrative Record for 66 FR 43492), the Commonwealth included DEP interoffice memoranda (Thomas Joseph to Krishnan Ramamurthy, July 14, 1994 and Krishnan Ramamurthy to Thomas McGinley, Babu Patel, Ronald Davis, Richard Maxwell, and Devendra Verma, July 15, 1994) which spoke directly to the $1500/ton dollar figure as being a guideline and not an upper limit. These memoranda explain that although PNG initially proposed intermediate original equipment manufacturer (OEM) combustion controls which would have reduced NO_X emissions from 254.7 tons per year to 115 tons per year (by 55 %) at a cost of $1355 per ton reduced, DEP required the installation of an OEM lean combustion modification that reduced NO_X emissions from 254.7 tons per year to 76 tons per year (by 69%) at a cost of $1684 per ton reduced. The DEP's July 15, 1994 interoffice memorandum says of the PNG RACT determination which exceeded the cost effectiveness screening level of $1500 per ton ''Tom's (Joseph) insistence for the next more stringent level of control than the company's chosen level in the case of PNG was consistent with EPA Region III's sentiment that establishing any dollar figure in RACT guidance will not provide for an ''automatic'' rejection of a control technology as RACT for a source.''

In no instance, has EPA proposed to approve a RACT determination submitted by the Commonwealth which was based solely on a conclusion that controls that cost more than $1500/ton were not required as RACT. As explained in the response provided in section II. A. of this document, EPA conducts its review of the entire case-by-case RACT SIP submittal including the source's proposed RACT plan and analyses, Pennsylvania's analyses and the RACT plan approval, consent order or permit itself to insure that the requirements of the SIP-approved generic RACT have been followed. These analyses not only evaluate and consider the costs of potential control options, but also evaluate their technological feasibility.

E. Comment: PennFuture comments that any emission reduction credits (ERCs) earned by sources subject to RACT must be surplus to all applicable state and federal requirements. Under Pennsylvania law, ERCs must be surplus, permanent, quantified, and Federally enforceable. 25 Pa.Code 127.207(1). As to the requirement that ERCs be surplus, the Pennsylvania Code states: ERCs shall be included in the current emission inventory, and may not be required by or be used to meet past or current SIP, attainment demonstration, RFP, emission limitation or compliance plans. Emission reductions necessary to meet NSPS, LAER, RACT, Best Available Technology, BACT and permit or plan approval emissions limitations or another emissions limitation required by the Clean Air Act or the [Air Pollution Control Act] may not be used to generate ERCs. 25 Pa.Code 127.207(1)(i). To be creditable, ERCs must surpass not only RACT requirements but a host of other possible sources of emission limits. PennFuture comments that some of the RACT evaluations at issue in the current EPA notices purport to establish RACT as a baseline for future ERCs. PennFuture does acknowledge that EPA notes in its boilerplate for the notices, that Pennsylvania and EPA have established a series of NO_X-reducing rules, including the recent Chapter 145 rule, to reduce NO_X at large utility and industrial sources. See, for example, 66 FR 42415, 16–17 (August 13, 2001). Because any ERCs must be surplus to the most stringent limitation applicable under state or federal law as described in the Pennsylvania Code provision set forth above, DEP and EPA must not approve ERCs unless they surpass all such limitations in addition to any limits set by RACT.

Response: EPA agrees with this comment by PennFuture. The approval of a case-by-case RACT determination, in and of itself, does not establish the baseline from which further emission reductions may be calculated and assumed creditable under the Commonwealth's SIP-approved NSR and ERC program. Moreover, EPA's review of the Pennsylvania DEP's implementation of its approved SIP-approved NSR and ERC program indicates that the Commonwealth calculates and credits ERCs in accordance with the SIP-approved criteria for doing so as outlined in PennFuture's comment. No source for which EPA is approving a case-by-case RACT determination should assume that its RACT approval alone automatically establishes the baseline against which it may calculate creditable ERCs.

F. Comment: PennFuture comments that as in the case with Pennsylvania Power—Newcastle, EPA should compare RACT proposals to applicable acid rain program emission limits and control strategies. PennFuture contends that EPA previously disapproved a RACT proposal for the Pennsylvania Power—Newcastle plant [62 FR 43959 (1997); 63 FR 23668 (1998)] and that EPA did so on the basis that the acid rain program requires more stringent emission limits. PennFuture asserts that while EPA had originally proposed to approve this proposal, an analysis of comparable boilers and, especially, a comparison to Phase II emission limits under the acid rain program led EPA to conclude that the RACT proposal emission limits were too lenient. [62 FR at 43961]. Therefore, PennFuture contends that for sources subject to the acid rain program, EPA should consider emissions and control strategies for compliance with acid rain emission limits when evaluating proposals for compliance with RACT.

Response: Title IV of the Act, addressing the acid rain program, contains NO_X emission requirements for utilities which must be met *in addition to* any RACT requirements (see NO_X Supplement to the General Preamble at 57 FR 55625, November 25, 1992). The Act provides for a number of control programs that may affect similar sources. For example, new sources may be subject to new source performance standards (NSPS), best available control technology (BACT), and lowest achievable emission rate (LAER). Other controls, under such programs as the acid rain program or the hazardous air pollutant program may also apply to sources. However, the applicability of these other requirements, which are often more stringent than RACT, do not establish what requirements must apply under the RACT program. While these programs may provide information as to

the technical and economic feasibility of reduction programs for RACT, there is no presumption that acid rain controls should be mandated as RACT.

EPA stated in the final disapproval of the NO_X RACT determination for PPNC [63 FR at 23669], that the discussion concerning average emission rates for boilers with respect to the acid rain program requirements were included in order to provide a context for EPA's proposed disapproval. EPA made clear in its August 18, 1997 proposed disapproval of Pennsylvania Powers'—Newcastle (PPNC) RACT determination, that the basis for disapproval was a comparison between PPNC's boilers and other similar combustion units, not acid rain limits. In fact, EPA stated in the August 18, 1997 proposed disapproval that ''Without additional knowledge or information, it would be erroneous and premature to conclude that the limits in the acid rain permit are RACT.'' [62 FR at 43961]. EPA clearly stated in the final disapproval for PPNC that it did not use acid rain permit limits, or Pennsylvania's participation in any other NO_X control program, to determine PPNC RACT approvability [63 FR at 23670]. Nor has EPA intended to use participation in NO_X control programs including acid rain, in determining RACT for PPNC or any other subject sources. EPA also stated that the April 30, 1998, PPNC disapproval was based on the absence of pertinent information regarding a computerized combustion optimization system through an enforceable permit, not comparison of acid rain permit limits.

G. Comment: PennFuture submitted comments specific to the case-by-case RACT determinations for two sources located in the Philadelphia area, namely for Kurz-Hastings, and GATX Terminals Corporation.

(1) Kurz-Hastings—PennFuture comments that the Kurz-Hastings plant is the second-highest VOC emitter in Philadelphia with the potential to emit 3400 tons per year of VOCs. PennFuture's comment recognizes that Kurz-Hastings' VOC-emitting processes (several printing machines) are subject to SIP-approved category RACT regulations and do not require a case-by-case RACT evaluation. PennFuture asserts, however, that Kurz-Hastings' own data show that annual emissions from these units are still one-third or more of its potential to emit, suggesting that VOC controls on these units are only modestly effective. PennFuture also comments that the case-by-case RACT evaluation of Kurz-Hastings' mixing room operations, rejects control technologies that are up to 99% effective in favor of minimal work-practice efforts. Therefore, PennFuture comments that the RACT determination for Kurz-Hastings merits close review by EPA to determine whether RACT requires a more effective control strategy for VOCs, and as at other plants, EPA must not approve this RACT proposal without conducting a thorough evaluation of available control technology.

Response: EPA disagrees with PennFuture's comments. The comment regarding the RACT requirements applicable to the printing machines at Kurz-Hastings are outside the scope of this rulemaking. Those printing machines are subject to a SIP-approved source category VOC RACT regulation adopted by the Commonwealth pursuant to the Graphic Arts CTG. The fact that compliance with that applicable regulation achieves an approximate 66 percent annual reduction in VOCs from Kurz-Hastings' printing machines does not require that a different or more stringent RACT be explored and imposed on this facility. With regard to fugitive emissions from the mixing room and clean-up operations, the work practice standards imposed on Kurz-Hastings for its mixing room and clean-up operations are consistent with RACT determinations routinely made and approved for such fugitive emission sources at graphic arts facilities. EPA's review of the SIP revision submitted for Kurz-Hastings indicates that the applicable SIP-approved definitions, provisions and procedures have been followed in imposing RACT for this facility.

(2) GATX Terminals Corporation—Citing Philadelphia Air Management Service (AMS) documents, PennFuture notes that GATX has the potential to emit 12,867 tons per year of VOC as a Bulk Terminal facility, and that its marine vessel loading unit has a potential to emit 3,520 tons of VOC per year. PennFuture then comments that the Philadelphia AMS's RACT review memorandum notes that a permit restriction limits emissions from this marine vessel loading operation to 59 tons per year in place of an add-on VOC control device. PennFuture goes on to note that, EPA promulgated a National Emission Standard for Marine Tank Vessel Loading Operations in 1995, which specifically established RACT for such sources at 40 CFR Part 63, Subpart Y. PennFuture notes that the RACT evaluation submitted by GATX to AMS in 1994 noted the pendency of this rule, which requires capture of VOCs and routing for combustion or recovery at an efficiency of up to 98 percent (RACT Proposal for a Marine Tank Vessel Loading Terminal Facility, prepared for GATX Terminals Corporation by Versar, Inc., July 14, 1994, p. 12). PennFuture comments that AMS either overlooked this reference or chose not to require as RACT a highly effective control technology that, according to the GATX consultant, was ''technically viable'' at this plant. PennFuture, therefore, asserts that since EPA has promulgated a regulation specifically designating RACT for sources such as the GATX marine vessel loading operation, EPA must not approve a RACT proposal for this operation unless it includes the application of technology required by EPA in its regulation at 40 CFR, Part 63, Subpart Y.

Response: EPA disagrees with PennFuture's comments regarding the marine vessel loading operation at GATX. The federal regulations cited by PennFuture were promulgated at 40 CFR, Part 63, Subpart Y on September 19, 1995 (61 FR 48399) more than 3 months after the compliance date imposed in Act for major sources of VOC subject to non-CTG RACT. Moreover, the compliance date promulgated for the RACT standards of Subpart Y for sources such as GATX was two years beyond after the regulation's effective date. Most relevantly, the 59 ton per year annual limit imposed by AMS (and submitted by DEP on its behalf as a SIP revision) on GATX's marine vessel loading operation represents a 98.3 percent reduction in VOC emissions from the operation's 3,520 tons per year potential to emit which is at least as stringent as the requirements of 40 CFR Part 63, Subpart Y. Moreover, GATX's RACT plan approval (PA–51–5003) requires the compliance with the 59 ton per year annual limit by the date imposed in Act for major sources of VOC subject to non-CTG RACT. Environmentally, there is no additional benefit that would result in disapproving the case-by-case RACT SIP submittal for GATX's marine vessel loading operation. Approval of the case-by-case RACT SIP revision for GATX in no way relieves the source from any otherwise applicable Maximum Available Control Technology (MACT) requirements of 40 CFR Part 63, Subpart Y.

III. Final Action

EPA is approving the SIP revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and/or NO_X RACT for 18 major sources located in the Philadelphia area. EPA is approving Pennsylvania's RACT SIP submittals because the AMS and PADEP established and imposed these RACT requirements in accordance with the

criteria set forth in the SIP-approved RACT regulations applicable to these sources. The AMS and PADEP have also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

IV. Administrative Requirements

A. General 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 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for eighteen (18) named sources.

C. 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 December 31, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving VOC and/or NO_X RACT for eighteen sources located in the Philadelphia area 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, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 15, 2001.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR part 52 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 NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(156) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(156) Revisions to the Pennsylvania Regulations, Chapter 129 pertaining to VOC and NO_X RACT determinations for sources located in the Philadelphia area submitted by the Pennsylvania Department of Environmental Protection on September 20, 1995, April 16, 1996, May 2, 1996, July 2, 1997, July 24, 1998, December 7, 1998, April 9, 1999, and April 20, 1999.

(i) Incorporation by reference.

(A) Letters submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO_X RACT determinations, in the form of plan approvals and operating permits on September 20, 1995, April 16, 1996, May 2, 1996, July 2, 1997, July 24, 1998, December 7, 1998, April 9, 1999, and April 20, 1999.

(B) Plan approvals (PA), Operating permits (OP) issued to the following sources:

(*1*) Amerada Hess Corp., PA–51–5009, for PLID 5009, effective May 29, 1995.

(*2*) Amoco Oil Company, PA–51–5011, for PLID 5011, effective May 29, 1995.

(*3*) Cartex Corporation, OP–09–0076, effective April 9, 1999, except for the expiration date.

(*4*) Exxon Company, U.S.A., PA–51–5008, for PLID 5008, effective May 29, 1995.

(*5*) GATX Terminals Corporation, PA–51–5003, for PLID 5003, effective May 29, 1995.

(*6*) Hatfield, Inc., OP–46–0013A, effective January 9, 1997 (as revised

October 1, 1998), except for the expiration date.

(*7*) J. L. Clark, Inc., OP–36–02009, effective April 16, 1999, except for the expiration date.

(*8*) Johnson Matthey, Inc., OP–15–0027, effective August 3, 1998 (as revised April 15, 1999), except for the expiration date.

(*9*) Kurz Hastings, Inc., PA–51–1585, for PLID 1585, effective May 29, 1995.

(*10*) Lawrence McFadden, Inc., PA–51–2074, for PLID 2074, effective June 11, 1997.

(*11*) Philadelphia Baking Company, PA–51–3048, for PLID 3048, effective April 10, 1995.

(*12*) Philadelphia Gas Works, PA–51–4921, for PLID 4921, effective May 29, 1995.

(*13*) PPG Industries, Inc., OP–23–0005, effective June 4, 1997, except for the expiration date.

(*14*) SmithKline Beecham Pharmaceuticals, OP–46–0035, effective March 27, 1997 (as revised October 20, 1998), except for the expiration date.

(*15*) Teva Pharmaceuticals USA, OP–09–0010, effective April 9, 1999, except for the expiration date.

(*16*) The Philadelphian Condominium Building, PA–51–6512, for PLID 6512, effective May 29, 1995.

(*17*) Warner Company, OP–15–0001, effective July 17, 1995 except for the expiration date.

(*18*) Webcraft Technologies, Inc., OP–09–0009, effective April 18, 1996 (as revised October 15, 1998), except for the expiration date.

(ii) Additional Materials—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the sources listed in paragraph (c)(156)(i)(B) of this section.

[FR Doc. 01–26766 Filed 10–30–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4186; FRL–7089–9]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for 14 Individual Sources in the Philadelphia-Wilmington-Trenton Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for fourteen major sources of volatile organic compounds (VOC) and/or nitrogen oxides (NO_X). These sources are located in the Philadelphia-Wilmington-Trenton ozone nonattainment area (the Philadelphia area). EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA or the Act).

EFFECTIVE DATE: This final rule is effective on November 15, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia Spink, (215) 814–2104 or by e-mail at *spink.marcia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 8, 1995, March 21, 1996, January 21, 1997, July 24, 1998, April 20, 1999, March 23, 2001 (two separate submissions), and July 5, 2001; PADEP submitted revisions to the Pennsylvania SIP to establish and impose RACT for several major sources of VOC and/or NO_X. This rulemaking pertains to fourteen of those sources. The remaining sources are or have been the subject of separate rulemakings. These sources are all located in the Philadelphia area and include: Perkasie Industries; Quaker Chemical Corporation; Rohm and Haas—Bucks County Plant; Rohm and Haas—Philadelphia Plant; SBF Communications Graphics; Schlosser Steel, Inc.; SEPTA's Berridge/Courtland Maintenance Shop; Smith-Edwards-Dunlap Company; Southwest Water Pollution Control Plant/Biosolids Recycling Center; Stroehman Bakeries, Inc.; Sunoco, Inc. (R&M) Refinery; Tasty Baking Company; Transcontinental Gas Pipeline Corp.—Compressor Station #200; and Worthington Steel Company.

On September 6, 2001 (66 FR 46525), EPA published a direct final rule and a companion notice of proposed rulemaking (66 FR 46573) to approve these SIP revisions. On October 9, 2001, we received adverse comments on our direct final rule from the Citizens for Pennsylvania's Future (PennFuture). On October 10, 2001, EPA signed a withdrawal notice for timely publication in the **Federal Register** informing the public that the direct final rule did not take effect. We indicated in our September 6, 2001 direct final rulemaking that if we received adverse comments, EPA would address all public comments in a subsequent final rule based on the proposed rule (66 FR 46573). This is that subsequent final rule. A description of the RACT determination(s) made for each source was provided in the September 6, 2001 direct final rule and will not be restated here. A summary of the comments submitted by PennFuture germane to this final rulemaking and EPA's responses are provided in Section II of this document.

II. Public Comments and Responses

On October 9, 2001, the Citizens for Pennsylvania's Future (PennFuture) submitted adverse comments on the proposed rule published by EPA in the **Federal Register** on September 6, 2001 to approve case-by-case RACT SIP submissions from the Commonwealth for NO_X and or VOC sources located in the Philadelphia area. A summary of those comments and EPA's responses are provided below.

A. Comment: PennFuture comments that EPA has conducted no independent technical review, and has prepared no technical support document to survey potential control technologies, determine the capital and operating costs of different options, and rank these options in total and marginal cost per ton of NO_X and VOC controlled. In citing the definition of the term ''RACT,'' and the Strelow Memorandum [Roger Strelow, Assistant Administrator for Air and Waste Management, EPA, December 9, 1976, cited in *Michigan* v. *Thomas,* 805 F.2d 176, 180 (6th Cir. 1986) and at 62 FR 43134, 43136 (1997)], PennFuture appears to comment that in every situation, RACT must include an emission rate. PennFuture asserts that EPA should conduct its own RACT evaluation for each source, or at a minimum document a step-by-step review demonstrating the adequacy of state evaluations, to ensure that appropriate control technology is applied. The commenter also believes that EPA's failure to conduct its own independent review of control technologies has resulted in our proposing to approve some RACT

determinations that fail to meet the terms of EPA's own RACT standard.

Response: On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of Pennsylvania's generic RACT regulations, 25 PA Code Chapters 121 and 129, thereby approving the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. Subsection 129.91, *Control of major sources of NO_X and VOCs,* requires subject facilities to submit a RACT plan proposal to both the Pennsylvania Department of Environmental Protection (DEP) and to EPA Region III by July 15, 1994 in accordance with subsection 129.92, entitled, *RACT proposal requirements.* Under subsection 129.92, that proposal is to include, among other information: (1) A list each of subject source at the facility; (2) The size or capacity of each affected source, and the types of fuel combusted, and the types and amounts of materials processed or produced at each source; (3) A physical description of each source and its operating characteristics; (4) Estimates of potential and actual emissions from each affected source with supporting documentation; (5) A RACT analysis which meets the requirements of subsection 129.92 (b), including technical and economic support documentation for each affected source; (6) A schedule for implementation as expeditiously as practicable but not later than May 15, 1995; (7) The testing, monitoring, recordkeeping and reporting procedures proposed to demonstrate compliance with RACT; and (8) any additional information requested by the DEP necessary to evaluate the RACT proposal. Under subsection 129.91, the DEP will approve, deny or modify each RACT proposal, and submit each RACT determination to EPA for approval as a SIP revision.

The conditional nature of EPA's March 23, 1998 conditional limited approval did not impose any conditions pertaining to the regulation's procedures for the submittal of RACT plans and analyses by subject sources and approval of case-by case RACT determinations by the DEP. Rather, EPA stated that ''* * * RACT rules *may not merely be procedural rules* (emphasis added) that require the source and the State to later agree to the appropriate level of control; rather the rules must identify the appropriate level of control for source categories or individual sources.''

On May 3, 2001 (66 FR 22123), EPA published a rulemaking determining that Pennsylvania had satisfied the conditions imposed in its conditional limited approval. In that rulemaking, EPA removed the conditional status of its approval of the Commonwealth's generic VOC and NO_X RACT regulations on a statewide basis. EPA received no public comments on its action and that final rule removing the conditional status of Pennsylvania's VOC and NO_X RACT regulations became effective on June 18, 2001. As of that time, Pennsylvania's generic VOC and NO_X RACT regulations retained a limited approval status. On September 6, 2001 (66 FR 46571), EPA proposed to remove the limited nature of its approval of Pennsylvania's generic RACT regulation in the Philadelphia area. EPA received no public comments on that proposal. Final action converting the limited approval to full approval shall occur once EPA has completed rulemaking to approve either: (1) The case-by-case RACT proposals for all sources subject to the RACT requirements currently known in the Philadelphia area *or* (2) for a sufficient number of sources such that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking (63 FR 13789).

EPA agrees that it has an obligation to review the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by Commonwealth to verify and determine if they are consistent with the RACT requirements of the Act and any relevant EPA guidance. EPA does not agree, however, that this obligation to review the case-by-case RACT determinations submitted by Pennsylvania necessarily extends to our performing our own RACT analyses, independent of the sources' RACT plans/analyses (included as part of the case-by case RACT SIP revisions) or the Commonwealth's analyses. EPA first reviews this submission to ensure that the source and the Commonwealth followed the SIP-approved generic rule when applying for and imposing RACT for a specific source. Then EPA performs a thorough review of the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then EPA may add additional EPA-generated analyses to the record.

While RACT, as defined for an individual source or source category, often does specify an emission rate, such is not always the case. EPA has issued Control Technique Guidelines (CTGs) which states are to use as guidance in development of their RACT determinations/rules for certain sources or source categories. Not every CTG issued by EPA includes an emission rate. There are several examples of CTGs issued by EPA wherein equipment standards and/or work practice standards alone are provided as RACT guidance for all or part of the processes covered. Such examples include the CTGs issued for Bulk gasoline plants, Gasoline service stations—Stage I, Petroleum Storage in Fixed-roof tanks, Petroleum refinery processes, Solvent metal cleaning, Pharmaceutical products, External Floating roof tanks and Synthetic Organic Chemical Manufacturing (SOCMI)/polymer manufacturing. (The publication numbers for these CTG documents may be found at *http://www.epa.gov/ttn/catc/dir1/ctg.txt*).

EPA disagrees with PennFuture's general comment that our failure to conduct our own independent review of control technologies for every case-by-case RACT determination conducted by the Commonwealth has resulted in our proposing to approve some RACT determinations that fail to meet the terms of our own RACT standard. PennFuture submitted comments specific to the case-by-case RACT determinations for two located in the Philadelphia area, namely for Kurz-Hastings and GATX Terminals Corporation. EPA summarizes those comments and provides responses in the final rule pertaining to those sources.

B. Comment: PennFuture comments that when EPA reviewed Pennsylvania's RACT program, it noted that Pennsylvania coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour ''are some of the largest NO_X emitting sources in the Commonwealth and in the Northeast United States'' [63 FR 13789, 13791 (1998)] and as such should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93) to guarantee that sources would achieve quantifiable emissions reductions under the RACT program. PennFuture goes on to comment that because EPA has not conducted and documented a technical review of Pennsylvania case-by case RACT submissions, EPA has not demonstrated that these large boilers are subject to ''numeric emission limitations'' under RACT. EPA must conduct a thorough RACT evaluation or review for each such source, and must document the application of numeric emission limits and quantifiable reductions for each coal-fired boiler with a rated heat input of over 100 million Btu per hour.

Response: Circumstances may exist wherein a state could justify otherwise, however, in general, EPA agrees with PennFuture that coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93).

As provided in the response found in II. A, EPA does not agree that it must conduct its own technical analysis of each of the case-by-case RACT determinations submitted for each RACT source in order to document that its RACT requirements include numeric emission limitations. That determination can be made by EPA when it reviews the plan approval, consent order, or permit issued to such a source as submitted by the Commonwealth as SIP revision. PennFuture's comment did not point to a specific instance where a RACT plan approval, consent order or permit imposing RACT on a coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour did, in fact, lack a numerical emission limitation(s). Nonetheless, pursuant to PennFuture's comment, EPA has re-examined all of the case-by-case RACT SIP submissions made by the Commonwealth for such sources located in the Philadelphia area. That re-examination, combined with information provided by the Commonwealth, indicates that each case-by-case RACT plan approval, consent order and/or permit for each coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour includes a numeric emission limitation. A listing of each source, its plan approval, consent order and/or permit number and its numerical emission limitation has been placed in the Administrative Records for the case-by-case RACT rulemakings for the Philadelphia area.

C. Comment: PennFuture asserts that the Commonwealth has not adopted and submitted category RACT rules for all VOC source categories for which federal control technique guidelines (CTGs) have been issued. The commenter refers to Appendix 1 of the Technical Support Document (dated May 14, 2001), prepared by EPA in support of its proposed rule to redesignate the Pittsburgh-Beaver Valley Ozone Nonattainment Area (66 FR 29270), to assert that EPA has failed to require the Commonwealth to submit VOC RACT rules for certain categories of sources. PennFuture specifically names source categories such as equipment leaks from natural gas/gas processing plants, coke oven batteries, iron and steel foundries, and publically owned treatment works and asserts that the Commonwealth has neglected a statutory requirement to adopt category RACT regulations for these and 14 other unnamed VOC source categories. PennFuture contends that the case-by-case approach for establishing and approving RACT is unacceptable under a statutory scheme that specifically requires category-wide RACT regulations for sources covered by CTGs. PennFuture's comment cites to *Wall* v. *EPA,* 2001 FED App. 0318P (6th Cir.)(Cincinnati ozone redesignation and RACT). EPA should reject any proposed case-by-case VOC RACT for a source in a category for which there is a CTG but no Pennsylvania RACT regulation.

Response: EPA has not issued CTGs for coke oven batteries, iron and steel foundries and publically owned treatment works. The Appendix 1, referred to by the commenter, lists CTG covered categories as well as source categories taken from two STAPPA/ALAPCO documents entitled, ''Meeting the 15-Percent Rate-of-Progress Requirement Under the Clean Air Act—A Menu of Options'' (September 1993) and ''Controlling Nitrogen Oxides Under the Clean Air Act—A Menu of Options'' (July 1994). The categories referenced by PennFuture are not VOC categories for which EPA has issued CTGs, but were included in Appendix A as examples of some of the types of sources that could be subject to Pennsylvania's generic RACT regulations. The Commonwealth is under no statutory obligation to adopt RACT rules for source *categories* for which EPA has not issued a CTG. In fact, CTGs do not exist for all but one of the *categories* to which the commenter explicitly refers.

The Act requires that states adopt regulations to impose RACT for ''major sources of VOC,'' located within those areas of a state where RACT applies under Part D of the Act [182(b)(2)(C)]. This is referred to as the non-CTG VOC RACT requirement. Moreover, EPA disagrees that there is a statutory mandate that a state adopt a source category RACT regulation even for a source category where EPA has issued a CTG. There are two statutory provisions that address RACT for sources covered by a CTG. One provides that states must adopt RACT for ''any category of VOC sources'' covered by a CTG issued prior to November 15, 1990 [182(b)(2)(A)]. The other provides that states must adopt VOC RACT for all ''VOC sources'' covered by a CTG issued after November 15, 1990 [182(b)(2)(B)]. EPA has long interpreted the statutory RACT requirement to be met either by adoption of category-specific rules or by source-specific rules for each source within a category. When initially established, RACT was clearly defined as a case-by-case determination, but EPA provided CTG's to simplify the process for states such that they would not be required to adopt hundreds or thousands of individual rules. See Strelow Memorandum dated December 9, 1976 and 44 FR 53761, September 17, 1979. EPA does not believe that Congress' use of ''source category'' in one provision of section 182(b)(2) was intended to preclude the adoption of source-specific rules.

Thus, where CTG-subject sources are located within those areas of a state where RACT applies under Part D of the Act, the state is obligated to impose RACT for the same universe of sources covered by the CTG. However, that obligation is not required to be met by the adoption and submittal of a source category RACT rule. A state may, instead, opt to impose RACT for such sources in permits, plan approvals, consent orders or in any other state enforceable document and submit those documents to EPA for approval as source-specific SIP revisions. This option has been exercised by many states, and happens most commonly when only a few CTG-subject sources are located in the state. The source-specific approach is generally employed to avoid what can be a lengthy and resource-intensive state rule adoption process for only a few sources that may have different needs and considerations that must be taken into account. EPA disagrees with the commenter's citing to *Wall* v. *EPA,* 2001 FED App. 0318P (6th Cir. Sept. 11, 2001) (Cincinnati ozone redesignation and RACT) as indicative of his contentions regarding states' obligations to adopt category-wide RACT regulations for sources covered by CTGs. The opinion rendered in the cited case neither requires states to adopt category-wide RACT regulations for sources covered by CTGs, nor does it preclude states from exercising their option to impose RACT for CTG-subject sources, on a case-by-case basis. Rather, it speaks only to the Act's requirement that states must implement RACT for CTG-subject sources in ozone nonattainment areas; and not to any specific regulatory construct by which they must do so. Pennsylvania has implemented RACT for all CTG-subject sources in the Philadelphia area, and, EPA has approved all such RACT determinations as revisions to the Pennsylvania SIP. As stated earlier, there is one source category explicitly included in PennFuture's comment for

which EPA has issued a CTG, namely natural gas/gas processing plants. The Commonwealth made a negative declaration to EPA on April 13, 1993, stating that as of that date there were no applicable sources in this category. Therefore, the Commonwealth did not adopt a category RACT regulation for natural gas/gas processing plants.

D. Comment: PennFuture cites EPA correspondence [letter from Marcia Spink, EPA, to James Salvaggio, DEP, December 15, 1993] to the Commonwealth which states that establishing any dollar figure in RACT guidance will not provide for the ''automatic'' selection or rejection of a control technology or emission limitation as RACT for a source or source category. With regard to the Pennsylvania DEP's intent to finalize a NO_X RACT Guidance Document for implementation of its NO_X RACT regulation, EPA's 1993 letter stated that the document could improperly be used to establish ''bright line'' or ''cook-book'' approaches, particularly for a regulation applicable to many source categories and suggested that if the guidance document must include dollar figures/ton, it provide approximate ranges by source category. PennFuture comments that DEP issued its ''Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions,'' March 11, 1994, and on pp. 8–9 states that the acceptable threshold is $1500 per ton, and that this figure applies to ''all source categories.'' PennFuture notes that EPA later objected to the $1500 per ton methodology as ''not generically acceptable to EPA'' [letter from Thomas Maslany, EPA, to James Salvaggio, DEP, June 24, 1997] and further stated in a **Federal Register** notice that a ''dollar per ton threshold'' is ''inconsistent with the definition of RACT'' [62 FR 43134, 37–38 (1997)].

PennFuture comments that EPA is proposing to approve RACT determinations based on a cost per ton method that EPA had previously rejected, and according to its own clearly expressed standard, EPA must not approve RACT determinations by Pennsylvania DEP that apply this $1500 per ton threshold. PennFuture asserts EPA must reject all Pennsylvania RACT determinations applying the standard of $1500 per ton, or any other ''bright line'' approach, as failing to follow EPA procedures established for Pennsylvania RACT.

Response: EPA still takes the position that a single cost per ton dollar figure may not, in and of itself, form the basis for rejecting a control technology, equipment standard, or work practice standard as RACT. The Technical Support Document prepared by EPA in support of its March 23, 1998 rulemaking [63 FR 13789] clearly indicates that the Commonwealth's document, ''Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions.'' March 11, 1994, had not been included as part of the SIP submission of the Commonwealth's generic regulation and, therefore, had not been approved by EPA. EPA further notes that the Administrative Record of the March 23, 1998 rulemaking [63 FR 13789], in addition to the correspondence cited by PennFuture, also includes correspondence from DEP to EPA [letter from James Salvaggio, DEP to David Arnold, EPA, September 10, 1997] stating that DEP's RACT guidance document does not establish a maximum dollar per ton for determining the cost effectiveness for RACT determinations and notes that the DEP's $1500 per ton cost effectiveness is a target value and not an absolute maximum. For example, in its analyses of the cost effectiveness of RACT control options submitted by DEP as part of the case-by-case SIP revision for Peoples Natural Gas (PNG) Valley Compressor Station's turbo charged lean burn IC engine (see the Administrative Record for 66 FR 43492), the Commonwealth included DEP interoffice memoranda (Thomas Joseph to Krishnan Ramamurthy, July 14, 1994 and Krishnan Ramamurthy to Thomas McGinley, Babu Patel, Ronald Davis, Richard Maxwell, and Devendra Verma, July 15, 1994) which spoke directly to the $1500/ton dollar figure as being a guideline and not an upper limit. These memoranda explain that although PNG initially proposed intermediate original equipment manufacturer (OEM) combustion controls which would have reduced NO_X emissions from 254.7 tons per year to 115 tons per year (by 55%) at a cost of $1355 per ton reduced, DEP required the installation of an OEM lean combustion modification that reduced NO_X emissions from 254.7 tons per year to 76 tons per year (by 69%) at a cost of $1684 per ton reduced. The DEP's July 15, 1994 interoffice memorandum says of the PNG RACT determination which exceeded the cost effectiveness screening level of $1500 per ton ''Tom's (Joseph) insistence for the next more stringent level of control than the company's chosen level in the case of PNG was consistent with EPA Region III's sentiment that establishing any dollar figure in RACT guidance will not provide for an ''automatic'' rejection of a control technology as RACT for a source.''

In no instance, has EPA proposed to approve a RACT determination submitted by the Commonwealth which was based solely on a conclusion that controls that cost more than $1500/ton were not required as RACT. As explained in the response provided in section II. A. of this document, EPA conducts its review of the entire case-by-case RACT SIP submittal including the source's proposed RACT plan and analyses, Pennsylvania's analyses and the RACT plan approval, consent order or permit itself to insure that the requirements of the SIP-approved generic RACT have been followed. These analyses not only evaluate and consider the costs of potential control options, but also evaluate their technological feasibility.

E. Comment: PennFuture comments that any emission reduction credits (ERCs) earned by sources subject to RACT must be surplus to all applicable state and federal requirements. Under Pennsylvania law, ERCs must be surplus, permanent, quantified, and Federally enforceable. 25 Pa.Code 127.207(1). As to the requirement that ERCs be surplus, the Pennsylvania Code states: ERCs shall be included in the current emission inventory, and may not be required by or be used to meet past or current SIP, attainment demonstration, RFP, emission limitation or compliance plans. Emission reductions necessary to meet NSPS, LAER, RACT, Best Available Technology, BACT and permit or plan approval emissions limitations or another emissions limitation required by the Clean Air Act or the [Air Pollution Control Act] may not be used to generate ERCs. 25 Pa.Code 127.207(1)(i). To be creditable, ERCs must surpass not only RACT requirements but a host of other possible sources of emission limits. PennFuture comments that some of the RACT evaluations at issue in the current EPA notices purport to establish RACT as a baseline for future ERCs. PennFuture does acknowledge that EPA notes in its boilerplate for the notices, that Pennsylvania and EPA have established a series of NO_X-reducing rules, including the recent Chapter 145 rule, to reduce NO_X at large utility and industrial sources. See, for example, 66 FR 42415, 16–17 (August 13, 2001). Because any ERCs must be surplus to the most stringent limitation applicable under state or federal law as described in the Pennsylvania Code provision set forth above, DEP and EPA must not approve ERCs unless they surpass all

such limitations in addition to any limits set by RACT.

Response: EPA agrees with this comment by PennFuture. The approval of a case-by-case RACT determination, in and of itself, does not establish the baseline from which further emission reductions may be calculated and assumed creditable under the Commonwealth's SIP-approved NSR and ERC program. Moreover, EPA's review of the Pennsylvania DEP's implementation of its approved SIP-approved NSR and ERC program indicates that the Commonwealth calculates and credits ERCs in accordance with the SIP-approved criteria for doing so as outlined in PennFuture's comment. No source for which EPA is approving a case-by-case RACT determination should assume that its RACT approval alone automatically establishes the baseline against which it may calculate creditable ERCs.

F. Comment: PennFuture comments that as in the case with Pennsylvania Power—Newcastle, EPA should compare RACT proposals to applicable acid rain program emission limits and control strategies. PennFuture contends that EPA previously disapproved a RACT proposal for the Pennsylvania Power—Newcastle plant [62 FR 43959 (1997); 63 FR 23668 (1998)] and that EPA did so on the basis that the acid rain program requires more stringent emission limits. PennFuture asserts that while EPA had originally proposed to approve this proposal, an analysis of comparable boilers and, especially, a comparison to Phase II emission limits under the acid rain program led EPA to conclude that the RACT proposal emission limits were too lenient. [62 FR at 43961]. Therefore, PennFuture contends that for sources subject to the acid rain program, EPA should consider emissions and control strategies for compliance with acid rain emission limits when evaluating proposals for compliance with RACT.

Response: Title IV of the Act, addressing the acid rain program, contains NO_X emission requirements for utilities which must be met *in addition to* any RACT requirements (see NO_X Supplement to the General Preamble at 57 FR 55625, November 25, 1992). The Act provides for a number of control programs that may affect similar sources. For example, new sources may be subject to new source performance standards (NSPS), best available control technology (BACT), and lowest achievable emission rate (LAER). Other controls, under such programs as the acid rain program or the hazardous air pollutant program may also apply to sources. However, the applicability of these other requirements, which are often more stringent than RACT, do not establish what requirements must apply under the RACT program. While these programs may provide information as to the technical and economic feasibility of reduction programs for RACT, there is no presumption that acid rain controls should be mandated as RACT.

EPA stated in the final disapproval of the NO_X RACT determination for PPNC [63 FR at 23669], that the discussion concerning average emission rates for boilers with respect to the acid rain program requirements were included in order to provide a context for EPA's proposed disapproval. EPA made clear in its August 18, 1997 proposed disapproval of Pennsylvania Powers'—Newcastle (PPNC) RACT determination, that the basis for disapproval was a comparison between PPNC's boilers and other similar combustion units, not acid rain limits. In fact, EPA stated in the August 18, 1997 proposed disapproval that ''Without additional knowledge or information, it would be erroneous and premature to conclude that the limits in the acid rain permit are RACT.'' [62 FR at 43961]. EPA clearly stated in the final disapproval for PPNC that it did not use acid rain permit limits, or Pennsylvania's participation in any other NO_X control program, to determine PPNC RACT approvability [63 FR at 23670]. Nor has EPA intended to use participation in NO_X control programs including acid rain, in determining RACT for PPNC or any other subject sources. EPA also stated that the April 30, 1998, PPNC disapproval was based on the absence of pertinent information regarding a computerized combustion optimization system through an enforceable permit, not comparison of acid rain permit limits.

III. Final Action

EPA is approving the SIP revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and/or NO_X RACT for fourteen major of sources located in the Philadelphia area. EPA is approving these SIP submittals because the Philadelphia AMS and PADEP established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The AMS and PADEP have also imposed record keeping, monitoring, and/or testing requirements sufficient to determine compliance with the applicable RACT determinations.

IV. Administrative Requirements

A. General 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 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS),

EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **Note**) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for fourteen named sources.

C. 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 December 31, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving VOC and NO_X RACT for fourteen major sources located in the Philadelphia area 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, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 15, 2001.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR part 52 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 NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(169) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(169) Revisions to the Pennsylvania Regulations, Chapter 129 pertaining to VOC and/or NO_X RACT for 14 sources located in the Philadelphia-Wilmington-Trenton area, submitted by the Pennsylvania Department of Environmental Protection on December 8, 1995, March 21, 1996, January 21, 1997, July 24, 1998, April 20, 1999, March 23, 2001 (two separate submissions), and July 5, 2001.

(i) Incorporation by reference.

(A) Letters submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO_X RACT determinations, in the form of plan approvals, operating permits, or compliance permits on December 8, 1995, March 21, 1996, January 21, 1997, July 24, 1998, April 20, 1999, March 23, 2001 (two separate submissions), and July 5, 2001.

(B) Plan approvals (PA), or Operating permits (OP) issued to the following sources:

(*1*) Stroehmann Bakeries, Inc., PA–46–0003, effective on May 4, 1995, except for the expiration date.

(*2*) Schlosser Steel, Inc., OP–46–0051, effective February 1, 1996, except for the expiration date.

(*3*) Perkasie Industries Corporation, OP–09–0011, effective August 14, 1996, except for the expiration date.

(*4*) Quaker Chemical Corporation, OP–46–0071, effective September 26, 1996, except for the expiration date.

(*5*) Worthington Steel Company, OP–15–0016, effective July 23, 1996, except for the expiration date.

(*6*) Transcontinental Gas Pipeline Corp., PA–15–0017, effective June 5, 1995, except for the expiration date.

(*7*) Rohm and Haas Company, Bucks County Plant, OP–09–0015, effective April 20, 1999, except for the expiration date.

(*8*) SEPTA—Berridge/Courtland Maintenance Shop, PA–51–4172, effective July 27, 1999, except for condition 2.C. and condition 5.

(*9*) Southwest Water Pollution Control Plant/Biosolids Recycling Center, PA–51–9515, effective July 27, 1999, except for condition 1.A.(1), condition 1.A.(2), condition 2.A., condition 2.B., and condition 7.

(*10*) Rohm and Haas Company, Philadelphia Plant, PA–51–1531, effective July 27, 1999, except for condition 7.

(*11*) Sunoco, Inc. (R&M), PA–1501/1517, for Plant ID: 1501 and 1517, effective August 1, 2000, except for conditions 1.A.(4) as it pertains to H–600, H–601, H–602, H–1 and H–3 heaters; 1.A. (7)–(10); 1.A. (12) as it pertains to HTR 1H4; 1.A. (13) as it pertains to HTR PH2 and HTR PH7; 1.A. (15) as it pertains to HTR 11H2; 1.A. (16); 1.A. (18) as it pertains to HTR 2H1, HTR 2H6, and HTR 2H8; 1.A. (19); 1.A. (21); 1.A.(22); 2.B. as it pertains to Gas Oil HDS Unit 866: HTR 12H1; 2.E.; 2.L.; and condition 6.

(*12*) SBF Communication Graphics, PA–2197, for Plant ID: 2197, effective July 21, 2000.

(*13*) Smith-Edwards-Dunlap, Company, PA–2255, for Plant ID: 2255, effective July 14, 2000.

(*14*) Tasty Baking Co., PA–2054, for Plant ID: 2054, effective April 9, 1995.

(ii) Additional Materials—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the sources listed in paragraph (c)(169)(i)(B) of this section.

[FR Doc. 01–26760 Filed 10–30–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4182; FRL–7089–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Nine Individual Sources in the Philadelphia-Wilmington-Trenton Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection

(PADEP) to establish and require reasonably available control technology (RACT) for 9 major sources of volatile organic compounds (VOC) and/or nitrogen oxides (NO_X). These sources are located in the Philadelphia-Wilmington-Trenton ozone nonattainment area (the Philadelphia area). EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA or the Act).

EFFECTIVE DATE: This final rule is effective on November 15, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia Spink (215) 814–2104 or by e-mail at spink.marcia.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On April 16, 1996, June 10, 1996, November 4, 1997, December 31, 1997, March 24, 1998, March 23, 2001, and August 8, 2001, PADEP submitted revisions to the Pennsylvania SIP which establish and impose RACT for several sources of VOC and/or NO_X. This rulemaking pertains to the 9 of those sources. The remaining sources are or have been the subject of separate rulemakings. The Commonwealth's submittals consist of plan approvals and operating permits which impose VOC and/or NO_X RACT requirements for each source. These sources are all located in the Philadelphia area and include: Jefferson Smurfit Corporation and Container Corporation of America; Maritank Philadelphia, Inc.; Moyer Packing Company; PECO Energy Company; Exelon Generation Company—Schuylkill Generating Station; Exelon Generation Company—Delaware Generating Station; Philadelphia Gas Works, Richmond Plant; SPS Technologies; and Tullytown Resource Recovery Facility (Waste Management of PA, Inc.).

On August 31, 2001, EPA published a direct final rule (66 FR 45928) and a companion notice of proposed rulemaking (66 FR 45953) to approve these SIP revisions. On October 1, 2001, we received adverse comments on our direct final rule from the Citizens for Pennsylvania's Future (PennFuture). On October 11, 2001, we published a timely withdrawal in the **Federal Register** informing the public that the direct final rule did not take effect. We indicated in our August 31, 2001 direct final rulemaking that if we received adverse comments, EPA would address all public comments in a subsequent final rule based on the proposed rule (66 FR 45953). This is that subsequent final rule. A description of the RACT determination(s) made for each source was provided in the August 31, 2001 direct final rule and will not be restated here. A summary of the comments submitted by PennFuture germane to this final rulemaking and EPA's responses are provided in Section II of this document.

II. Public Comments and Responses

On October 1, 2001, the Citizens for Pennsylvania's Future (PennFuture) submitted adverse comments on the proposed rule published by EPA in the **Federal Register** on August 31, 2001 to approve case-by-case RACT SIP submissions from the Commonwealth for NO_X and or VOC sources located in the Philadelphia area. A summary of those comments and EPA's responses are provided below.

A. Comment: PennFuture comments that EPA has conducted no independent technical review, and has prepared no technical support document to survey potential control technologies, determine the capital and operating costs of different options, and rank these options in total and marginal cost per ton of NO_X and VOC controlled. In citing the definition of the term ''RACT,'' and the Strelow Memorandum [Roger Strelow, Assistant Administrator for Air and Waste Management, EPA, December 9, 1976, cited in *Michigan* v. *Thomas,* 805 F.2d 176, 180 (6th Cir. 1986) and at 62 FR 43134, 43136 (1997)], PennFuture appears to comment that in every situation, RACT must include an emission rate. PennFuture asserts that EPA should conduct its own RACT evaluation for each source, or at a minimum document a step-by-step review demonstrating the adequacy of state evaluations, to ensure that appropriate control technology is applied. The commenter also believes that EPA's failure to conduct its own independent review of control technologies has resulted in our proposing to approve some RACT determinations that fail to meet the terms of EPA's own RACT standard.

Response: On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of Pennsylvania's generic RACT regulations, 25 PA Code Chapters 121 and 129, thereby approving the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. Subsection 129.91, *Control of major sources of NO_X and VOCs*, requires subject facilities to submit a RACT plan proposal to both the Pennsylvania Department of Environmental Protection (DEP) and to EPA Region III by July 15, 1994 in accordance with subsection 129.92, entitled, *RACT proposal requirements.* Under subsection 129.92, that proposal is to include, among other information: (1) A list each of subject source at the facility; (2) The size or capacity of each affected source, and the types of fuel combusted, and the types and amounts of materials processed or produced at each source; (3) A physical description of each source and its operating characteristics; (4) Estimates of potential and actual emissions from each affected source with supporting documentation; (5) A RACT analysis which meets the requirements of subsection 129.92 (b), including technical and economic support documentation for each affected source; (6) A schedule for implementation as expeditiously as practicable but not later than May 15, 1995; (7) The testing, monitoring, recordkeeping and reporting procedures proposed to demonstrate compliance with RACT; and (8) any additional information requested by the DEP necessary to evaluate the RACT proposal. Under subsection 129.91, the DEP will approve, deny or modify each RACT proposal, and submit each RACT determination to EPA for approval as a SIP revision.

The conditional nature of EPA's March 23, 1998 conditional limited approval did not impose any conditions pertaining to the regulation's procedures for the submittal of RACT plans and analyses by subject sources and approval of case-by case RACT determinations by the DEP. Rather, EPA stated that ''* * * RACT rules *may not merely be procedural rules* (emphasis added) that require the source and the State to later agree to the appropriate level of control; rather the rules must identify the appropriate level of control for source categories or individual sources.''

On May 3, 2001 (66 FR 22123), EPA published a rulemaking determining that Pennsylvania had satisfied the conditions imposed in its conditional limited approval. In that rulemaking, EPA removed the conditional status of its approval of the Commonwealth's generic VOC and NO_X RACT regulations

on a statewide basis. EPA received no public comments on its action and that final rule removing the conditional status of Pennsylvania's VOC and NO_X RACT regulations became effective on June 18, 2001. As of that time, Pennsylvania's generic VOC and NO_X RACT regulations retained a limited approval status. On September 6, 2001 (66 FR 46571), EPA proposed to remove the limited nature of its approval of Pennsylvania's generic RACT regulation in the Philadelphia area. EPA received no public comments on that proposal. Final action converting the limited approval to full approval shall occur once EPA has completed rulemaking to approve either (1) the case-by-case RACT proposals for all sources subject to the RACT requirements currently known in the Philadelphia area *or* (2) for a sufficient number of sources such that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking (63 FR 13789).

EPA agrees that it has an obligation to review the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by the Commonwealth to verify and determine if they are consistent with the RACT requirements of the Act and any relevant EPA guidance. EPA does not agree, however, that this obligation to review the case-by-case RACT determinations submitted by Pennsylvania necessarily extends to our performing our own RACT analyses, independent of the sources' RACT plans/analyses (included as part of the case-by case RACT SIP revisions) or the Commonwealth's analyses. EPA first reviews this submission to ensure that the source and the Commonwealth followed the SIP-approved generic rule when applying for and imposing RACT for a specific source. Then EPA performs a thorough review of the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then EPA may add additional EPA-generated analyses to the record.

While RACT, as defined for an individual source or source category, often does specify an emission rate, such is not always the case. EPA has issued Control Technique Guidelines (CTGs) which states are to use as guidance in development of their RACT determinations/rules for certain sources or source categories. Not every CTG issued by EPA includes an emission rate. There are several examples of CTGs issued by EPA wherein equipment standards and/or work practice standards alone are provided as RACT guidance for all or part of the processes covered. Such examples include the CTGs issued for Bulk gasoline plants, Gasoline service stations—Stage I, Petroleum Storage in Fixed-roof tanks, Petroleum refinery processes, Solvent metal cleaning, Pharmaceutical products, External Floating roof tanks and Synthetic Organic Chemical Manufacturing (SOCMI)/polymer manufacturing. (The publication numbers for these CTG documents may be found at *http://www.epa.gov/ttn/catc/dir1/ctg.txt*).

EPA disagrees with PennFuture's general comment that our failure to conduct our own independent review of control technologies for every case-by-case RACT determination conducted by the Commonwealth has resulted in our proposing to approve some RACT determinations that fail to meet the terms of our own RACT standard. PennFuture submitted comments specific to the case-by-case RACT determinations for two located in the Philadelphia area, namely for Kurz-Hastings and GATX Terminals Corporation. EPA summarizes those comments and provides responses in the final rule pertaining to those sources.

B. Comment: PennFuture comments that when EPA reviewed Pennsylvania's RACT program, it noted that Pennsylvania coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour ''are some of the largest NO_X emitting sources in the Commonwealth and in the Northeast United States'' [63 FR 13789, 13791 (1998)] and as such should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93) to guarantee that sources would achieve quantifiable emissions reductions under the RACT program. PennFuture goes on to comment that because EPA has not conducted and documented a technical review of Pennsylvania case-by case RACT submissions, EPA has not demonstrated that these large boilers are subject to ''numeric emission limitations'' under RACT. EPA must conduct a thorough RACT evaluation or review for each such source, and must document the application of numeric emission limits and quantifiable reductions for each coal-fired boiler with a rated heat input of over 100 million Btu per hour.

Response: Circumstances may exist wherein a state could justify otherwise, however, in general, EPA agrees with PennFuture that coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93).

As provided in the response found in II. A, EPA does not agree that it must conduct its own technical analysis of each of the case-by-case RACT determinations submitted for each RACT source in order to document that its RACT requirements include numeric emission limitations. That determination can be made by EPA when it reviews the plan approval, consent order, or permit issued to such a source as submitted by the Commonwealth as SIP revision. PennFuture's comment did not point to a specific instance where a RACT plan approval, consent order or permit imposing RACT on a coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour did, in fact, lack a numerical emission limitation(s). Nonetheless, pursuant to PennFuture's comment, EPA has re-examined all of the case-by-case RACT SIP submissions made by the Commonwealth for such sources located in the Philadelphia area. That re-examination, combined with information provided by the Commonwealth, indicates that each case-by-case RACT plan approval, consent order and/or permit for each coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour includes a numeric emission limitation. A listing of each source, its plan approval, consent order and/or permit number and its numerical emission limitation has been placed in the Administrative Records for the case-by-case RACT rulemakings for the Philadelphia area.

C. Comment: PennFuture asserts that the Commonwealth has not adopted and submitted category RACT rules for all VOC source categories for which federal control technique guidelines (CTGs) have been issued. The commenter refers to Appendix 1 of the Technical Support Document (dated May 14, 2001), prepared by EPA in support of its proposed rule to redesignate the Pittsburgh-Beaver Valley Ozone Nonattainment Area (66 FR 29270), to assert that EPA has failed to require the Commonwealth to submit VOC RACT rules for certain categories of sources. PennFuture specifically names source categories such as equipment leaks from natural gas/gas processing plants, coke oven batteries, iron and steel foundries, and publically owned treatment works and asserts that the Commonwealth has neglected a statutory requirement to adopt category RACT regulations for

these and 14 other unnamed VOC source categories. PennFuture's comment cites to *Wall* v. *EPA*, 2001 FED App. 0318P (6th Cir.)(Cincinnati ozone redesignation and RACT). EPA should reject any proposed case-by-case VOC RACT for a source in a category for which there is a CTG but no Pennsylvania RACT regulation.

Response: EPA has not issued CTGs for coke oven batteries, iron and steel foundries and publically owned treatment works. The Appendix 1, referred to by the commenter, lists CTG covered categories as well as source categories taken from two STAPPA/ALAPCO documents entitled, ''Meeting the 15-Percent Rate-of-Progress Requirement Under the Clean Air Act—A Menu of Options'' (September 1993) and ''Controlling Nitrogen Oxides Under the Clean Air Act—A Menu of Options'' (July 1994). The categories referenced by PennFuture are not VOC categories for which EPA has issued CTGs, but were included in Appendix A as examples of some of the types of sources that could be subject to Pennsylvania's generic RACT regulations. The Commonwealth is under no statutory obligation to adopt RACT rules for source *categories* for which EPA has not issued a CTG. In fact, CTGs do not exist for all but one of the categories to which the commenter explicitly refers.

The Act requires that states adopt regulations to impose RACT for ''major sources of VOC,'' located within those areas of a state where RACT applies under Part D of the Act [182(b)(2)(C)]. This is referred to as the non-CTG VOC RACT requirement. Moreover, EPA disagrees that there is a statutory mandate that a state adopt a source category RACT regulation even for a source category where EPA has issued a CTG. There are two statutory provisions that address RACT for sources covered by a CTG. One provides that states must adopt RACT for ''any category of VOC sources'' covered by a CTG issued prior to November 15, 1990 [182(b)(2)(A)]. The other provides that states must adopt VOC RACT for all ''VOC sources'' covered by a CTG issued after November 15, 1990 [182(b)(2)(B)]. EPA has long interpreted the statutory RACT requirement to be met either by adoption of category-specific rules or by source-specific rules for each source within a category. When initially established, RACT was clearly defined as a case-by-case determination, but EPA provided CTG's to simplify the process for states such that they would not be required to adopt hundreds or thousands of individual rules. See Strelow Memorandum dated December 9, 1976 and 44 FR 53761, September 17, 1979. EPA does not believe that Congress' use of ''source category'' in one provision of section 182(b)(2) was intended to preclude the adoption of source-specific rules.

Thus, where CTG-subject sources are located within those areas of a state where RACT applies under Part D of the Act, the state is obligated to impose RACT for the same universe of sources covered by the CTG. However, that obligation is not required to be met by the adoption and submittal of a source category RACT rule. A state may, instead, opt to impose RACT for such sources in permits, plan approvals, consent orders or in any other state enforceable document and submit those documents to EPA for approval as source-specific SIP revisions. This option has been exercised by many states, and happens most commonly when only a few CTG-subject sources are located in the state. The source-specific approach is generally employed to avoid what can be a lengthy and resource-intensive state rule adoption process for only a few sources that may have different needs and considerations that must be taken into account. EPA disagrees with the commenter's citing to *Wall* v. *EPA*, 2001 FED App. 0318P (6th Cir. Sept. 11, 2001) (Cincinnati ozone redesignation and RACT) as indicative of his contentions regarding states' obligations to adopt category-wide RACT regulations for sources covered by CTGs. The opinion rendered in the cited case neither requires states to adopt category-wide RACT regulations for sources covered by CTGs, nor does it preclude states from exercising their option to impose RACT for CTG-subject sources, on July 2, 1997, November 4, 1997, July 24 1998, October 2, 1998, March 3, 1999, April 9, 1999, and April 20, 1999, on a case-by-case basis. Rather, it speaks only to the Act's requirement that states must implement RACT for CTG-subject sources in ozone nonattainment areas; and not to any specific regulatory construct by which they must do so. Pennsylvania has implemented RACT for all CTG-subject sources in the Philadelphia area, and, EPA has approved all such RACT determinations as revisions to the Pennsylvania SIP. As stated earlier, there is one source category explicitly included in PennFuture's comment for which EPA has issued a CTG, namely natural gas/gas processing plants. The Commonwealth made a negative declaration to EPA on April 13, 1993, stating that as of that date there were no applicable sources in this category. Therefore, the Commonwealth did not adopt a category RACT regulation for natural gas/gas processing plants.

D. Comment: PennFuture cites EPA correspondence [letter from Marcia Spink, EPA, to James Salvaggio, DEP, December 15, 1993] to the Commonwealth which states that establishing any dollar figure in RACT guidance will not provide for the ''automatic'' selection or rejection of a control technology or emission limitation as RACT for a source or source category. With regard to the Pennsylvania DEP's intent to finalize a NO_X RACT Guidance Document for implementation of its NO_X RACT regulation, EPA's 1993 letter stated that the document could improperly be used to establish ''bright line'' or ''cook-book'' approaches, particularly for a regulation applicable to many source categories and suggested that if the guidance document must include dollar figures/ton, it provide approximate ranges by source category. PennFuture comments that DEP issued its ''Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions,'' March 11, 1994, and on pp. 8–9 states that the acceptable threshold is $1500 per ton, and that this figure applies to ''all source categories.'' PennFuture notes that EPA later objected to the $1500 per ton methodology as ''not generically acceptable to EPA'' [letter from Thomas Maslany, EPA, to James Salvaggio, DEP, June 24, 1997] and further stated in a **Federal Register** notice that a ''dollar per ton threshold'' is ''inconsistent with the definition of RACT'' [62 FR 43134, 37–38 (1997)].

PennFuture comments that EPA is proposing to approve RACT determinations based on a cost per ton method that EPA had previously rejected, and according to its own clearly expressed standard, EPA must not approve RACT determinations by Pennsylvania DEP that apply this $1500 per ton threshold. PennFuture asserts EPA must reject all Pennsylvania RACT determinations applying the standard of $1500 per ton, or any other ''bright line'' approach, as failing to follow EPA procedures established for Pennsylvania RACT.

Response: EPA still takes the position that a single cost per ton dollar figure may not, in and of itself, form the basis for rejecting a control technology, equipment standard, or work practice standard as RACT. The Technical Support Document prepared by EPA in support of its March 23, 1998 rulemaking [63 FR 13789] clearly indicates that the Commonwealth's document, ''Guidance Document on Reasonably Available Control

Technology for Sources of NO_X Emissions.'' March 11, 1994, had not been included as part of the SIP submission of the Commonwealth's generic regulation and, therefore, had not been approved by EPA. EPA further notes that the Administrative Record of the March 23, 1998 rulemaking [63 FR 13789], in addition to the correspondence cited by PennFuture, also includes correspondence from DEP to EPA [letter from James Salvaggio, DEP to David Arnold, EPA, September 10, 1997] stating that DEP's RACT guidance document does not establish a maximum dollar per ton for determining the cost effectiveness for RACT determinations and notes that the DEP's $1500 per ton cost effectiveness is a target value and not an absolute maximum. For example, in its analyses of the cost effectiveness of RACT control options submitted by DEP as part of the case-by-case SIP revision for Peoples Natural Gas (PNG) Valley Compressor Station's turbo charged lean burn IC engine (see the Administrative Record for 66 FR 43492), the Commonwealth included DEP interoffice memoranda (Thomas Joseph to Krishnan Ramamurthy, July 14, 1994 and Krishnan Ramamurthy to Thomas McGinley, Babu Patel, Ronald Davis, Richard Maxwell, and Devendra Verma, July 15, 1994) which spoke directly to the $1500/ton dollar figure as being a guideline and not an upper limit. These memoranda explain that although PNG initially proposed intermediate original equipment manufacturer (OEM) combustion controls which would have reduced NO_X emissions from 254.7 tons per year to 115 tons per year (by 55%) at a cost of $1355 per ton reduced, DEP required the installation of an OEM lean combustion modification that reduced NO_X emissions from 254.7 tons per year to 76 tons per year (by 69%) at a cost of $1684 per ton reduced. The DEP's July 15, 1994 interoffice memorandum says of the PNG RACT determination which exceeded the cost effectiveness screening level of $1500 per ton ''Tom's (Joseph) insistence for the next more stringent level of control than the company's chosen level in the case of PNG was consistent with EPA Region III's sentiment that establishing any dollar figure in RACT guidance will not provide for an 'automatic' rejection of a control technology as RACT for a source.''

In no instance, has EPA proposed to approve a RACT determination submitted by the Commonwealth which was based solely on a conclusion that controls that cost more than $1500/ton were not required as RACT. As explained in the response provided in section II. A. of this document, EPA conducts its review of the entire case-by-case RACT SIP submittal including the source's proposed RACT plan and analyses, Pennsylvania's analyses and the RACT plan approval, consent order or permit itself to insure that the requirements of the SIP-approved generic RACT have been followed. These analyses not only evaluate and consider the costs of potential control options, but also evaluate their technological feasibility.

E. Comment: PennFuture comments that any emission reduction credits (ERCs) earned by sources subject to RACT must be surplus to all applicable state and federal requirements. Under Pennsylvania law, ERCs must be surplus, permanent, quantified, and Federally enforceable. 25 Pa.Code 127.207(1). As to the requirement that ERCs be surplus, the Pennsylvania Code states: ERCs shall be included in the current emission inventory, and may not be required by or be used to meet past or current SIP, attainment demonstration, RFP, emission limitation or compliance plans. Emission reductions necessary to meet NSPS, LAER, RACT, Best Available Technology, BACT and permit or plan approval emissions limitations or another emissions limitation required by the Clean Air Act or the [Air Pollution Control Act] may not be used to generate ERCs. 25 Pa.Code 127.207(1)(i). To be creditable, ERCs must surpass not only RACT requirements but a host of other possible sources of emission limits. PennFuture comments that some of the RACT evaluations at issue in the current EPA notices purport to establish RACT as a baseline for future ERCs. PennFuture does acknowledge that EPA notes in its boilerplate for the notices, that Pennsylvania and EPA have established a series of NO_X-reducing rules, including the recent Chapter 145 rule, to reduce NO_X at large utility and industrial sources. See, for example, 66 FR 42415, 16–17 (August 13, 2001). Because any ERCs must be surplus to the most stringent limitation applicable under state or federal law as described in the Pennsylvania Code provision set forth above, DEP and EPA must not approve ERCs unless they surpass all such limitations in addition to any limits set by RACT.

Response: EPA agrees with this comment by PennFuture. The approval of a case-by-case RACT determination, in and of itself, does not establish the baseline from which further emission reductions may be calculated and assumed creditable under the Commonwealth's SIP-approved NSR and ERC program. Moreover, EPA's review of the Pennsylvania DEP's implementation of its approved SIP-approved NSR and ERC program indicates that the Commonwealth calculates and credits ERCs in accordance with the SIP-approved criteria for doing so as outlined in PennFuture's comment. No source for which EPA is approving a case-by-case RACT determination should assume that its RACT approval alone automatically establishes the baseline against which it may calculate creditable ERCs.

F. Comment: PennFuture comments that as in the case with Pennsylvania Power—Newcastle, EPA should compare RACT proposals to applicable acid rain program emission limits and control strategies. PennFuture contends that EPA previously disapproved a RACT proposal for the Pennsylvania Power—Newcastle plant [62 FR 43959 (1997); 63 FR 23668 (1998)] and that EPA did so on the basis that the acid rain program requires more stringent emission limits. PennFuture asserts that while EPA had originally proposed to approve this proposal, an analysis of comparable boilers and, especially, a comparison to Phase II emission limits under the acid rain program led EPA to conclude that the RACT proposal emission limits were too lenient. [62 FR at 43961]. Therefore, PennFuture contends that for sources subject to the acid rain program, EPA should consider emissions and control strategies for compliance with acid rain emission limits when evaluating proposals for compliance with RACT.

Response: Title IV of the Act, addressing the acid rain program, contains NO_X emission requirements for utilities which must be met *in addition* to any RACT requirements (see NO_X Supplement to the General Preamble at 57 FR 55625, November 25, 1992). The Act provides for a number of control programs that may affect similar sources. For example, new sources may be subject to new source performance standards (NSPS), best available control technology (BACT), and lowest achievable emission rate (LAER). Other controls, under such programs as the acid rain program or the hazardous air pollutant program may also apply to sources. However, the applicability of these other requirements, which are often more stringent than RACT, do not establish what requirements must apply under the RACT program. While these programs may provide information as to the technical and economic feasibility of reduction programs for RACT, there is

no presumption that acid rain controls should be mandated as RACT.

EPA stated in the final disapproval of the NO_X RACT determination for PPNC [63 FR at 23669], that the discussion concerning average emission rates for boilers with respect to the acid rain program requirements were included in order to provide a context for EPA's proposed disapproval. EPA made clear in its August 18, 1997 proposed disapproval of Pennsylvania Powers'—Newcastle (PPNC) RACT determination, that the basis for disapproval was a comparison between PPNC's boilers and other similar combustion units, not acid rain limits. In fact, EPA stated in the August 18, 1997 proposed disapproval that ''Without additional knowledge or information, it would be erroneous and premature to conclude that the limits in the acid rain permit are RACT.'' [62 FR at 43961]. EPA clearly stated in the final disapproval for PPNC that it did not use acid rain permit limits, or Pennsylvania's participation in any other NO_X control program, to determine PPNC RACT approvability [63 FR at 23670]. Nor has EPA intended to use participation in NO_X control programs including acid rain, in determining RACT for PPNC or any other subject sources. EPA also stated that the April 30, 1998, PPNC disapproval was based on the absence of pertinent information regarding a computerized combustion optimization system through an enforceable permit, not comparison of acid rain permit limits.

III. Final Action

EPA is approving the SIP revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and/or NO_X RACT for nine major of sources located in the Philadelphia area. EPA is approving these RACT SIP submittals because the Philadelphia Air Management Services (AMS) and PADEP established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The AMS and PADEP have also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

IV. Administrative Requirements

A. General 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 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

B. Submission to Congress and the Comptroller General

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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for nine named sources.

C. 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 December 31, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving VOC and/or NO_X RACT for nine sources located in the Philadelphia area 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, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 15, 2001.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR part 52 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 NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(184) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(184) Revisions to the Pennsylvania Regulations, Chapter 129 pertaining to VOC and NO_X RACT, for sources located in the Philadelphia area submitted by the Pennsylvania Department of Environmental Protection on April 16, 1996, June 10, 1996, November 4, 1997, December 31, 1997, March 24, 1998, March 23, 2001, and August 8, 2001.

(i) Incorporation by reference.

(A) Letters submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO_X RACT determinations, in the form of plan approvals and operating permits on April 16, 1996, June 10, 1996, November 4, 1997, December 31, 1997, March 24, 1998, March 23, 2001, and August 8, 2001.

(B) Plan approvals (PA), or Operating Permits (OP) issued to the following sources:

(*1*) Jefferson Smurfit Corporation and Container Corporation of America, PA–51–1566, for PLID 1566, effective April 10, 1995.

(*2*) Maritank Philadelphia, Inc., PA–51–5013, for PLID 5013, effective December 28, 1995.

(*3*) Moyer Packing Company, OP–46–0001, effective March 15, 1996, except for the expiration date.

(*4*) Tullytown Resource Recovery Facility (Waste Management of PA, Inc.), OP–09–0024, effective July 14, 1997, except for the expiration date.

(*5*) SPS Technologies, OP–46–0032, effective October 30, 1997, except for the expiration date.

(*6*) PECO Energy Company, OP–09–0077, effective December 19, 1997, except for the expiration date.

(*7*) Philadelphia Gas Works, Richmond Plant, PA–51–4922, effective July 27, 1999, except for condition 1.A. 10–17, inclusive, condition 2.E., 2.F., 2.G., and condition 8.

(*8*) Exelon Generation Company-Delaware Generating Station, PA–51–4901, effective July 11, 2001.

(*9*) Exelon Generation Company-Schuylkill Generating Station, PA–51–4904, effective July 11, 2001.

(ii) Additional Materials—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the sources listed in paragraph (c)(184) (i)(B) of this section.

[FR Doc. 01–26765 Filed 10–30–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[KY–T5–2001–02; FRL–7095–1]

Clean Air Act Final Full Approval of Operating Permit Program; KY

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final full approval.

SUMMARY: EPA is promulgating full approval of the operating permit program of the Kentucky Department of Environmental Protection. This program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdiction. On November 14, 1995, EPA granted interim approval to the Kentucky title V operating permit program. This agency revised its program to satisfy the conditions of the interim approval, and EPA proposed full approval in the **Federal Register** on September 12, 2001. EPA did not receive any comments on the proposed action, so this action promulgates final full approval of the Kentucky operating permit program.

EFFECTIVE DATE: November 30, 2001.

ADDRESSES: Copies of the Kentucky submittal and other supporting documentation used in developing the final full approval are available for inspection during normal business hours at EPA, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Interested persons wanting to examine these documents, which are contained in EPA docket number KY–T5–2001–01, should make an appointment at least 48 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Ms. Kim Pierce, EPA Region 4, at (404) 562–9124 or *pierce.kim@epa.gov/.*

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

What is the operating permit program?
Why is EPA taking this action?
What is involved in this final action?

What Is the Operating Permit Program?

Title V of the CAA Amendments of 1990 required all state and local permitting authorities to develop operating permit programs that met certain federal criteria. In implementing the title V operating permit programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under the title V program include: ''major'' sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of major sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds (VOCs), carbon monoxide, lead, sulfur dioxide, nitrogen oxides (NO_X), or particulate matter (PM_{10}); those that emit 10 tons per year of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as ''serious,'' major sources include those with the potential of emitting 50 tons per year or more of VOCs or NO_X.

Why Is EPA Taking This Action?

Where a title V operating permit program substantially, but not fully, met the criteria outlined in the

implementing regulations codified at 40 Code of Federal Regulations (CFR) part 70, EPA granted interim approval contingent on the state revising its program to correct the deficiencies. Because the Kentucky program substantially, but not fully, met the requirements of part 70, EPA granted interim approval to this program in a rulemaking (60 FR 57186) published on November 14, 1995. The interim approval notice described the conditions that had to be met in order for the Kentucky program to receive full approval. Interim approval of this program expires on December 1, 2001.

What Is Involved in This Final Action?

The Kentucky Department of Environmental Protection has fulfilled the conditions of the interim approval granted on November 14, 1995. On September 12, 2001, EPA published a notice in the **Federal Register** (see 66 FR 47428) proposing full approval of the Kentucky title V operating permit program, and proposing approval of other program revisions. Since EPA did not receive any comments on the proposal, this action promulgates final full approval of the Kentucky program and final approval of the other program changes described in the proposal.

Administrative Requirements

A. Docket

Copies of the Kentucky submittal and other supporting documentation used in developing the final full approval are contained in docket files maintained at the EPA Region 4 office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full approval. The primary purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and (2) to serve as the record in case of judicial review. The docket files are available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

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

C. 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 an economically significant regulatory action as defined in Executive Order 12866, and it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

This rule does not have Federalism implications because 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, ''Federalism'' (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the state and the federal government established in the CAA.

E. Executive Order 13175

This rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000).

F. Executive Order 13211

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 significantly regulatory action under Executive Order 12866.

G. Regulatory Flexibility Act

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

This rule will not have a significant impact on a substantial number of small entities because operating permit program approvals under section 502 of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because this 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.

H. Unfunded Mandates Reform Act

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

EPA has determined that the approval action proposed does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action 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.

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 operating permit programs, EPA's role is to approve state

choices, provided that they meet the criteria of the CAA and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the state to use VCS, EPA has no authority to disapprove an operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of an operating permit program that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of NTTAA do not apply.

J. Paperwork Reduction Act

This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. 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.

K. Submission to Congress and the Comptroller General

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).

List of Subjects in 40 CFR Part 70

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

Authority: 42 U.S.C. 7401–7671q.

Dated: October 22, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

For reasons set out in the preamble, Appendix A of part 70 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

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

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

2. Appendix A to part 70 is amended by revising the entry for Kentucky to read as follows:

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

* * * * *

Kentucky

(a)(1) Kentucky Natural Resources and Environmental Protection Cabinet: Submitted on December 27, 1993, and supplemented on November 15, 1994, April 14, 1995, May 3, 1995, and May 22, 1995; interim approval expires on December 1, 2001.

(2) Revision submitted on February 13, 2001. Rule revisions contained in the February 13, 2001 submittal adequately addressed the conditions of the interim approval which expires on December 1, 2001. The Commonwealth is hereby granted final full approval effective on November 30, 2001.

(b)(1) Air Pollution Control District of Jefferson County: submitted on February 1, 1994, and supplemented on November 15, 1994, May 3, 1995, July 14, 1995, and February 16, 1996; full approval effective on April 22, 1996.

(2) [Reserved]

* * * * *

[FR Doc. 01–27362 Filed 10–30–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–7095–8]

RIN 2060–AJ76

Prohibition on Gasoline Containing Lead or Lead Additives for Highway Use: Fuel Inlet Restrictor Exemption for Motorcycles

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: This rule exempts motorcycles with emission control devices that could be affected by the use of leaded gasoline from having to be equipped with gasoline tank filler inlet restrictors. As before, motorcycles and other motor vehicles without such emission control devices are not required to be equipped with gasoline tank filler inlet restrictors.

The Clean Air Act and corresponding EPA regulations prohibit gasoline containing lead or lead additives (leaded gasoline) as a motor vehicle fuel after December 31, 1995. As a deterrent to misfueling prior to that date, the EPA regulations required filler inlet restrictors on motor vehicles equipped with an emission control device that could be affected by the use of leaded gasoline, such as a catalytic converter. EPA retained that provision after 1995 because the filler inlet restrictor, besides being a deterrent to misfueling, has also been incorporated into the design of some vapor recovery gasoline nozzle spouts. Gasoline tank filler inlet restrictors do not work well with most motorcycle fuel tanks, especially the saddle type of tank, because of their shallow depth. A gasoline tank filler inlet restrictor may cause gasoline spitback or spillage when a motorcycle is refueled, which increases evaporative emissions. Today there is relatively little risk of misfueling a motorcycle. Also, it is unlikely that a gasoline tank filler inlet restrictor on a motorcycle helps to control gasoline vapors when the motorcycle is refueled.

DATES: This action will be effective December 31, 2001, unless the Agency receives adverse or critical comments or a request for a public hearing by November 30, 2001. If the Agency receives adverse or critical comments, EPA will publish in the **Federal Register** a timely withdrawal of this direct final rule informing the public that this rule will not take effect.

ADDRESSES: Any person wishing to submit comments should submit them (in duplicate, if possible) to the docket listed below, with a copy forwarded to Richard Babst, U.S. Environmental Protection Agency, Transportation and Regional Programs Division, 1200 Pennsylvania Avenue, N.W., (Mail Code: 6406J), Washington, D.C. 20460.

Public Docket: Materials relevant to this rule are available for inspection in public docket A–2001–17 at the Air Docket Office of the EPA, Room M–1500, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–7548, between the hours of 8:00 a.m. to 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Richard Babst at (202) 564–9473 facsimile: (202) 565–2085, e-mail address: babst.richard@epa.gov

SUPPLEMENTARY INFORMATION

Regulated Entities

Entities potentially affected by this rule are manufacturers of motorcycles. Regulated categories include:

Category	Examples of regulated entities
Industry	Manufacturers of motorcycles

To determine whether you are affected by this rule, you should carefully examine the requirements in § 80.24(b) of title 40 of the Code of Federal Regulations (CFR). 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.

I. History of Fuel Tank Filler Restrictor

Prior to 1996, 40 CFR 80.24(b) contained size specifications for the gasoline tank filler inlet of motor vehicles equipped with an emission control device that would be significantly impaired by the use of leaded gasoline. The purpose of the tank filler inlet restriction was to allow the insertion of an unleaded gasoline pump nozzle, but not a leaded gasoline pump nozzle. Specifically, § 80.24(b) required that a manufacturer of motor vehicles ''equipped with an emission control device which the Administrator has determined will be significantly impaired by the use of leaded gasoline'' shall ''[m]anufacture such vehicle with each gasoline tank filler inlet having a restriction which prevents the insertion of a nozzle with a spout as described in § 80.22(f)(1) and allows the insertion of a nozzle with a spout as described in § 80.22(f)(2).'' Section 80.22(f)(1) specified that ''[e]ach pump from which leaded gasoline is introduced into motor vehicles shall be equipped with a nozzle spout having a terminal end with an outside diameter of not less than 0.930 inch (2.363 centimeters).'' Section 80.22(f)(2) specified that ''[e]ach pump from which unleaded gasoline is introduced into motor vehicles shall be equipped with a nozzle spout which meets the following specifications: (i) The outside diameter of the terminal end shall not be greater than 0.840 inch (2.134 centimeters); (ii) * * *''

Section 80.24(b) contained additional specifications to prevent misfueling of motor vehicles with leaded gasoline. Section 80.24(b)(1) required that the filler inlet restrictor ''pool'' gasoline at the restrictor's opening, if fueling is attempted when the spout of a pump nozzle is not inserted into the restrictor opening. Historically, this had been accomplished by a spring-loaded door on the inside of the restrictor opening, which would be pushed open by inserting the spout of an unleaded gasoline nozzle. Since leaded gasoline nozzle spouts were larger than the inlet restrictor opening, they did not fit into the restrictor opening or push open the spring loaded door. Fueling with leaded gasoline would require the nozzle spout to be positioned in front of the restrictor opening and spring-loaded door. If fueling were attempted in this manner, the gasoline would pool at the restrictor opening and cause the nozzle's automatic shut-off device to activate. The related § 80.24(b)(2) exempted motorcycle manufacturers from meeting the ''pooling'' requirements of § 80.24(b)(1).

Section 211(n) of the Clean Air Act, 42 U.S.C. 7545(n), prohibits the introduction of gasoline containing lead or lead additives into commerce for use as a motor vehicle fuel after December 31, 1995. For consistency with this Clean Air Act prohibition, we published in the **Federal Register** on February 2, 1996 a direct final rule and associated notice of proposed rulemaking revising our regulations (61 FR 3832 and 61 FR 3894, respectively). The direct final rule became effective on March 4, 1996 except for language associated with § 80.24(b). We withdrew language for that paragraph from the direct final rule on March 4, 1996 (61 FR 8221) due to adverse comment, and subsequently published revised language in the **Federal Register** on June 6, 1996 (61 FR 28763).

In the February 2, 1996 direct final rule and associated notice of proposed rulemaking, we removed various portions of § 80.24, including the introductory text, and modified § 80.24(b) to make the size requirements of the tank filler inlet applicable to all new motor vehicles, and not just to those equipped with an emission control device that would be significantly impaired by the use of leaded gasoline. We reasoned that retaining the requirement for the tank filler inlet restrictor would conform with the statutory ban prohibiting the use of gasoline containing lead or lead additives as a motor vehicle fuel. The restrictor requirements for motor vehicles would match the nozzle size requirement for dispensing unleaded gasoline, which we had retained in § 80.22(f)(2). Further, General Motors and several gasoline pump nozzle manufacturers had requested that the specification for the tank filler inlet size be retained so that automobile equipment would continue to be compatible with Stage II vapor recovery pump nozzles. We simplified the applicability language of § 80.24(b) to refer to all motor vehicles, instead of motor vehicles equipped with an emission control device that would be significantly impaired by the use of leaded gasoline, because we thought that all motor vehicles were manufactured with tank filler inlet restrictors at that time. We did not intend to broaden the applicability of § 80.24(b).

In the February 2, 1996 direct final rule and associated notice of proposed rulemaking, we also removed §§ 80.24(b)(1) and 80.24(b)(2). We believed misfueling would be unlikely, making the § 80.24(b)(1) ''pooling'' safeguard against misfueling unnecessary. Once we removed § 80.24(b)(1), it was appropriate for us to remove § 80.24(b)(2) as well, since § 80.24(b)(2) exempted motorcycle manufacturers from the requirements of § 80.24(b)(1).

We received an adverse comment from Harley Davidson, Inc. (Harley) on the revised language of 40 CFR 80.24(b) in the February 2, 1996 direct final rule and proposed rule.[1] In its comment, Harley stated that motorcycles generally do not use emission control devices that would be significantly impaired by the use of leaded gasoline (e.g., catalytic converters) and are therefore not manufactured with tank filler inlet restrictors matching the requirements of the existing § 80.24(b). The February 2, 1996 direct final rule and associated notice of proposed rulemaking would have required these motorcycles to meet the fuel inlet size requirements of 40 CFR § 80.24(b), thereby causing additional economic burden and manufacturing complexity for Harley. We did not intend or foresee that we would be expanding the applicability of § 80.24(b) by the revised applicability language. Because of this adverse comment, we withdrew paragraph 40 CFR 80.24(b) from the direct final rule, and published it in the June 6, 1996 final rule with its previous applicability.

II. Why Are We Exempting Motorcycles?

There are few, if any, offsetting environmental benefits to support the continued use of gasoline tank filler inlet restrictors in motorcycles equipped with emission control devices that would be significantly impaired by the use of leaded gasoline. Today there is relatively little risk of misfueling a motorcycle. Gasoline tank filler inlet restrictors were originally required to prevent motor vehicles with an emission control device, such as a catalytic converter, from using leaded gasoline. Leaded gasoline can damage catalytic converters and certain other emission control devices. Significantly,

[1] This comment can be found in docket No. A–95–13 for the February 2, 1996 direct final rule and proposed rule, and for the June 6, 1996 final rule.

leaded gasoline has now been banned from use in all motor vehicles for over five years and is generally no longer available for sale at gasoline filling stations. Also, it is unlikely that a gasoline tank filler inlet restrictor on a motorcycle helps to control gasoline vapors when the motorcycle is refueled. Although a vapor recovery gasoline nozzle, in conjunction with the gasoline tank filler inlet restrictor, helps to control gasoline vapors and emissions when used to refuel most motor vehicles, they are relatively ineffective when used to refuel motorcycles.

During refueling of a car or truck, the fuel nozzle spout is inserted into the fill tube and through the filler neck restrictor plate. The fuel nozzle automatically stops the flow of gasoline when it senses a sufficiently high level of gasoline vapors below the restrictor plate, which indicates the fuel tank is full. We understand that, beginning with the introduction of Stage I vapor recovery fueling systems in the early 1990s and continuing with current Stage II vapor recovery systems, the fuel tank inlet restrictor of a car or truck has been used as a guide, a seat and a pressure contact point for some vapor recovery gasoline nozzle spouts.

For some vapor recovery fueling systems, the restrictor plate lines up the nozzle and helps concentrate the fugitive emissions for collection. Without the restrictor plate, more fugitive emissions would be released. The ''balance'' type of vapor recovery system uses a boot to seal around the outside of the tank filler inlet tube. While this system does not require the restrictor plate to help capture fugitive emissions, it requires the restrictor plate to push against in order to activate an interlock. An ''emission'' or ''efficiency'' control vapor recovery device does not need the restrictor plate to control fugitive emissions. This device consists of a cup, which has an outside diameter the same as the inside diameter of the fill hole, that is clipped to the spout. A similar type of vapor recovery system, the Marconi system, does not need the restrictor plate or the plastic cup.[2]

Most on-board vapor recovery systems, which are required for light-duty vehicles and light-duty trucks but not for motorcycles, are also designed around the restrictor plate. A seal is needed between the pump nozzle and the tank filler inlet tube to prevent fugitive emissions from escaping. This seal is normally located below the restrictor plate, and uses the restrictor plate to line-up the nozzle with the seal. Fugitive emissions below the seal are then diverted to a canister in the vehicle.[3]

We understand that gasoline tank filler inlet restrictors do not work well with most motorcycle fuel tanks, especially the saddle type of tank, because of their shallow depth. The use of gasoline tank inlet restrictors in motorcycles may in fact contribute to unnecessary releases of gasoline vapors and emissions. Unlike a car or truck, motorcycles are typically fueled while the operator observes the tank fuel level, similar to filling a small gasoline container typically used to refuel lawnmowers and other small gasoline powered equipment. However, the restrictor plate obstructs the view of the fuel level, and could contribute to inadvertent fuel overfill and spillage. If fueling with the ''balance'' type of vapor recovery nozzle, motorcycle operators generally pull back and hold the rubber boot to activate the interlock and allow for better visibility, but that defeats the vapor recovery system.[4] Further, the filler inlet restrictor may cause the nozzle spout to be inserted deeper into the motorcycle tank than otherwise would be necessary, potentially causing increased splash back from the shallow tank. Besides causing excess gasoline vapors and spitback through the restrictor plate openings, this splashback could cause the pump nozzle to prematurely stop the flow of gasoline. The operator may have to reactivate the pump nozzle, possible several times, before the tank is full.

These problems were not much of an issue in the 1995 and earlier time frame, because only relatively few motorcycles were equipped with catalytic converters, and thus, only relatively few required tank inlet restrictors. However, a significant number of 2001 model year motorcycles have been equipped with catalytic converters.

III. Final EPA Action

Today's direct final rule revises 40 CFR 80.24(b) to exempt motorcycles equipped with an emission control device that will be affected by the use of leaded gasoline, such as a catalytic converter, from having to be equipped with a fuel tank inlet restrictor.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial action and anticipate no adverse comment. This rulemaking is very narrow in scope and exempts motorcycles from a requirement that, when applied to motorcycles, generally has no air quality benefits and that, in fact, could cause increased evaporative emissions from motorcycles during refueling. In the ''Proposed Rules'' section of today's **Federal Register**, however, we are publishing a separate document that will serve as the proposal to exempt motorcycles from having to be equipped with a tank filler inlet restrictor if adverse comments are filed. This direct final rule will be effective on December 31, 2001 without further notice unless we receive adverse comment by November 30, 2001. If EPA receives adverse comment, we will publish a timely withdrawal of this direct final rule in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on today's proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (Oct. 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 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 this rule is not a ''significant regulatory action'' under the terms of EO 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.*, and therefore is not subject to these requirements.

[2] Conversation with Catlow on April 3, 2001.

[3] Ibid

[4] Also, for those motorcycles where the filler cap is attached to the gas tank by a hinge, the rubber boot of a ''balance'' type of vapor recovery nozzle would not seat correctly anyway, and the insertion pressure required to compress the boot may damage the gas cap, hinge, and tank finish.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's rule exempts motorcycles from a current provision that requires them, under certain circumstances, to be equipped with fuel inlet restrictors, and thus avoids the costs imposed by the existing Federal regulations. Today's rule, therefore, is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As discussed above, the rule is a deregulatory action and affects only motorcycle manufacturers.

D. 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, Apr. 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 the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. EPA reduced the content of lead in leaded gasoline, because EPA found that lead particle emissions from motor vehicles presented a significant risk of harm to the health of urban populations, especially children (38 FR 33734, Dec. 6, 1973). Congress ultimately banned the use of leaded gasoline in motor vehicles after 1995. 42 U.S.C. 7545(n). Gasoline tank filler inlet restrictors were related to the phase-out of leaded gasoline to prevent a motor vehicle with an emission control device, such as a catalytic converter, from using leaded gasoline. Leaded gasoline can damage such emission control devices. Today there is relatively little risk of misfueling a motorcycle with an emission control device that could be damaged by the use of leaded gasoline, because leaded gasoline has now been banned from use in all motor vehicles for over five years and is generally no longer available for sale at gasoline filling stations.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, Aug. 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 rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132. Today's rule eliminates the existing requirement that manufacturers of motorcycles must equip certain motorcycles with fuel tank filler inlet restrictors. Thus, Executive Order 13132 does not apply to this rule.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub L. No. 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., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

G. Congressional Review

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(a).

H. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities affected by this rule.

Today's rule is a deregulatory action and affects all motorcycle manufacturers. It eliminates the existing requirement that manufacturers of motorcycles must equip certain motorcycles with fuel tank filler inlet restrictors. We have therefore concluded that today's rule will relieve regulatory burden for any small entity.

I. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

On January 1, 2001, Executive Order 13084 was superseded by Executive Order 13175. However, this rule was developed during the period when Executive Order 13084 was still in force, and so tribal considerations were addressed under Executive Order 13084. Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, Nov. 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Today's 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. The rule affects the applicability of the fuel tank filler inlet restrictor to motorcycles. It therefore affects only manufacturers of motorcycles. Thus, Executive Order 13175 does not apply to this rule.

J. 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.

K. Electronic Copies of Rulemaking

A copy of this action is available on the Internet at *http://www.epa.gov/otaq* under the title: ''Direct Final Rule—Prohibition on Gasoline Containing Lead or Lead Additives for Highway Use: Fuel Inlet Restrictor Exemption for Motorcycles.''

L. Statutory Authority

Authority for this action is in sections 211, and 301(a) of the Clean Air Act, 42 U.S.C. 7545, 7601(a).

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Motor vehicle and motor vehicle engines, Motor vehicle pollution, Penalties.

Dated: October 24, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 80—REGULATIONS OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7545 and 7601(a).

2. Section 80.24 is amended by adding paragraph (c) to read as follows:

§ 80.24 Controls applicable to motor vehicle manufacturers.

* * * * *

(c) A motorcycle, as defined at 40 CFR 86.402 for the applicable model year, is exempt from to the requirements of paragraph (b) of this section.

[FR Doc. 01–27378 Filed 10–30–01; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register

Vol. 66, No. 211

Wednesday, October 31, 2001

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 39

[Docket No. 2001–SW–07–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS332C, L, L1, and L2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Eurocopter France Model AS332C, L, L1, and L2 helicopters. This proposal would require inspecting the cockpit pedal unit adjustment lever (lever) for a crack at specified time intervals by either a borescope or by a dye-penetrant inspection and replacing any cracked lever with an airworthy lever before further flight. This proposal is prompted by reports of cracks detected in the lever. The actions specified by the proposed AD are intended to prevent failure of the lever, loss of access to the brake pedals on the ground or loss of yaw control in flight, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before December 31, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–07–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2001–SW–07–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–07–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter France Model AS332 helicopters. The DGAC advises of several cases of failure of the lever, which might lead to temporary loss of access to the brake pedals during aircraft taxiing or difficulties in ensuring the yaw control of the aircraft in flight.

Eurocopter France has issued Alert Service Telex No. 67.00.19 R1, dated November 14, 2000 (Telex). The Telex specifies inspecting the lever, part number (P/N) 332A27–2344–20, for a crack by either a borescope within 50 hours time-in-service (TIS) and at intervals not to exceed 500 hours TIS or by dye-penetrant inspection within 50 hours TIS and at intervals not to exceed 1500 hours TIS. The Telex also specifies replacing any cracked lever with an airworthy lever. The DGAC has classified this Telex as mandatory and issued AD Nos. 2000–487–017(A) and 2000–486–077(A), both dated December 13, 2000, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to this bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

We have identified an unsafe condition that is likely to exist or develop on other Eurocopter France Model AS332C, L, L1, and L2 helicopters of the same type designs registered in the United States. Therefore, the proposed AD would require inspecting the lever for a crack and replacing any unairworthy lever, P/N 332A27–2344–20, with an airworthy lever. The actions would be required to be accomplished in accordance with the Telex described previously.

The FAA estimates that 3 helicopters of U.S. registry would be affected by this proposed AD. The FAA also estimates the following requirements to accomplish the proposed AD: 2 work hours for a borescope inspection, 5 work hours for a dye-penetrant inspection, and 5 work hours to replace the lever unless accomplished during a dye-penetrant inspection in which no

additional work hours would be required. The average labor rate is $60 per work hour. Required parts would cost approximately $200. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1500 assuming an inspection using the dye-penetrant method and replacing each lever.

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

For the reasons discussed above, I certify that this proposed regulation (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 2001–SW–07–AD.

Applicability: Model AS332C, L, L1, and L2 helicopters, with a cockpit pedal unit adjustment lever (lever), part number (P/N) 332A27–2344–20, 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 (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the lever, loss of access to the brake pedals on the ground or loss of yaw control in flight, and subsequent loss of control of the helicopter, accomplish the following:

(a) Inspect the lever for a crack, using either a borescope or dye-penetrant inspection, in accordance with the Accomplishment Instructions of either paragraph C.C.3. or C.C.5., as applicable, of Eurocopter France Alert Telex 67.00.19R1, dated November 14, 2000, and Figure 1 of this AD as follows:

(1) For helicopters with 4450 or more hours time-in-service (TIS), inspect the lever within the next 50 hours TIS, and thereafter at intervals not to exceed 500 hours TIS if performed by a borescope or 1500 hours TIS if performed by dye-penetrant.

(2) For helicopters with less than 4450 hours TIS, inspect the lever before accumulating 4500 hours TIS, and thereafter at intervals not to exceed 500 hours TIS if performed by a borescope or 1500 hours TIS if performed by dye-penetrant.

(3) Replace any cracked lever with an airworthy lever before further flight.

Note 2: Returning a cracked lever to the manufacturer is not required by this AD nor are you required to inspect levers held as spares.

BILLING CODE 4910–13–U

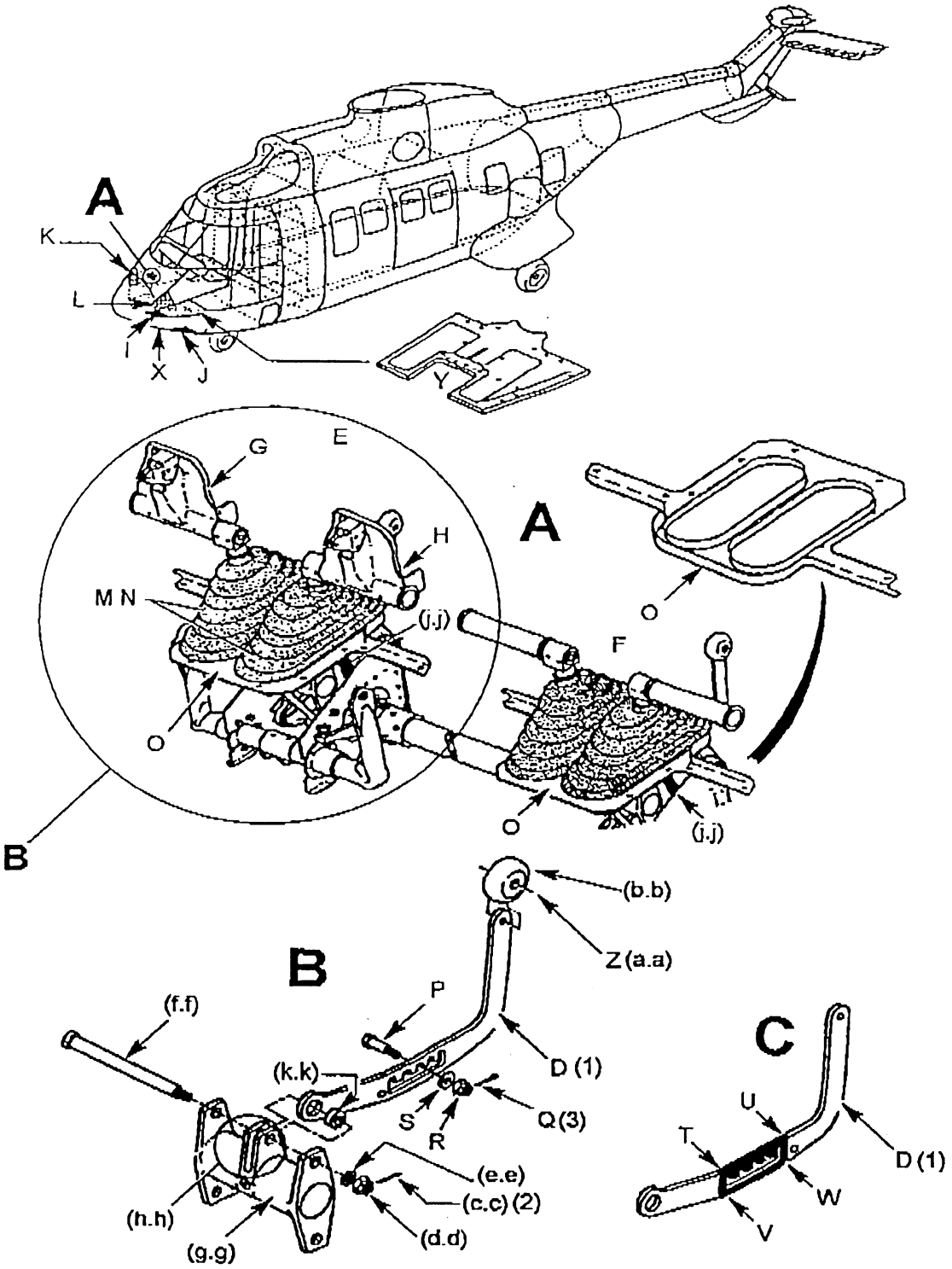

FIGURE 1

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(b) 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.

(c) Special flight permits may be issued 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.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD Nos. 2000–487–017(A) and 2000–486–077(A), both dated December 13, 2000.

Issued in Fort Worth, Texas, on October 16, 2001.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 01–26964 Filed 10–30–01; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 312

Children's Online Privacy Protection Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (''the Commission'') proposes amending the Children's Online Privacy Protection Rule (''the Rule'') to extend the time period during which website operators may use an e-mail message from the parent, coupled with additional steps, to obtain verifiable parent consent for the collection of personal information from children for internal use by the website operator. The Commission proposes to extend the time period from April 21, 2002 until April 21, 2004.

DATES: Written comments will be accepted until November 30, 2001.

ADDRESSES: Written comments should be submitted to: Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The Commission requests that commenters submit the original plus five copies, if feasible. To enable prompt review and public access, comments also should be submitted, if possible, in electronic form, on a 3½-inch computer disk, with a disk label stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs based on DOS or Windows are preferred. Files from other operating systems should be submitted in ASCII text format.) Alternatively, the Commission will accept comments submitted to the following e-mail address *slidingscale@ftc.gov*. Individual members of the public filing comments need not submit multiple copies or comments in electronic form. All submissions should be captioned: ''Children's Online Privacy Protection Rule Amendment—Comment, P994504.'' Comments will be posted on the Commission's website: *http://www.ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Elizabeth Delaney, (202) 326–2903, Mamie Kresses, (202) 326–2070, or Kial Young, (202) 326–3525, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Section A. Background

As part of the effort to protect children's online privacy, Congress enacted the Children's Online Privacy Protection Act of 1998, 15 U.S.C. 6501 *et seq.* (''COPPA''), to prohibit unfair or deceptive acts or practices in connection with the collection, use, or disclosure of personally identifiable information from children on the Internet. On October 20, 1999, the Commission issued its final Rule implementing COPPA, which became effective on April 21, 2000.[1] The Rule imposes certain requirements on operators of websites or online services directed to children under 13 years of age, or other websites or online services that have actual knowledge that they have collected information from a child under 13 years of age. Among other things, the Rule requires that website operators obtain verifiable parental consent prior to collecting, using, or disclosing personal information from children under 13 years of age.

Section B. Obtaining Verifiable Parent Consent

The Rule provides that, ''[a]ny method to obtain verifiable parental consent must be reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent.''[2] In order to allow time for reliable electronic methods of verification to become widely available and affordable, the Rule sets forth a sliding scale approach to obtaining verifiable parental consent. For uses of personal information that will involve disclosing the information to the public or third parties, the Rule requires that website operators use the more reliable methods of obtaining verifiable parental consent. These methods include: using a print-and-send form that can be faxed or mailed back to the website operator; requiring a parent to use a credit card in connection with a transaction; having a parent call a toll-free telephone number staffed by trained personnel; using a digital certificate that uses public key technology; and using e-mail accompanied by a PIN or password obtained through one of the above methods.[3]

In contrast, if the website operator is collecting personal information for its internal use only, the Rule allows verifiable parental consent to be obtained through the use of an e-mail message from the parent, coupled with additional steps. Such additional steps are designed to provide assurances that the person providing the consent is the parent and include: sending a confirmatory e-mail to the parent after receiving consent; or obtaining a postal address or telephone number from the parent and confirming the parent's consent by letter or telephone call. The sliding scale is set to expire on April 21, 2002, at which time website operators must obtain verifiable parental consent using the more reliable methods for all uses of personal information.[4]

At the time it issued the final Rule, the Commission anticipated that the sliding scale was necessary only in the short term because the more reliable methods of obtaining verifiable parental consent would soon be widely available and affordable.[5] At the present time, however, it appears that the expected progress in available technology has not occurred. The Commission therefore proposes to amend the Rule to extend the sliding scale mechanism for an additional two years to April 21, 2004 and requests public comment on this proposed extension of time.

Section C. Invitation To Comment

Before adopting this amendment as final, the Commission will give consideration to any written comments submitted to the Secretary of the Commission on or before November 30, 2001. Comments submitted will be

[1] 64 FR 59888 (1999).

[2] 16 CFR 312.5(b)(1).

[3] 16 CFR 312.5(b)(2).

[4] *Id.*

[5] 64 FR 59902 (1999).

available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and Commission regulations, on normal business days between the hours of 8:30 a.m. and 5 p.m. at the Public Reference Section, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580. Comments will also be posted on the Commission website, *http://www.ftc.gov.*

Section D. Communications by Outside Parties to Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. *See* 16 CFR 1.26(b)(5).

Section E. Regulatory Flexibility Act

The provision of the Regulatory Flexibility Act requiring an initial regulatory flexibility analysis (5 U.S.C. 605) does not apply because it is believed that the proposed amendment to the Rule will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605). This notice also serves as certification to the Small Business Administration of that determination.

The economic impact of the proposed amendment to the Rule is not anticipated to be significant because it is only extending, for a two-year period, a sliding scale mechanism that is already in place. The proposed amendment does not alter the *status quo*, and would postpone the potential economic impact, if any, of the expiration of the sliding scale mechanism. Thus, the economic impact of the amendment to the Rule is expected to be comparatively minimal.

Nonetheless, to ensure that no significant economic impact on a substantial number of small entities is overlooked, the Commission hereby requests public comment on the effect of the proposed amendment to the Rule on the costs, profitability, and competitiveness of, and employment in, small entities. After considering such comments, if any, the Commission will determine whether preparation of a final regulatory flexibility analysis (pursuant to 5 U.S.C. 605) is required.

Section F. Paperwork Reduction Act

This amendment would not amend any information collection requirements that have previously been reviewed and approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act, as amended, 44 U.S.C. 3501 *et seq.*

Section G. Questions on the Proposed Amendment

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of the proposed amendment to the Children's Online Privacy Protection Rule. The Commission proposes to extend the sliding scale mechanism for obtaining verifiable parental consent for two years until April 21, 2004. The Commission is particularly interested in comments addressing the following questions:

(1) Are secure electronic mechanisms now widely available to facilitate verifiable parental consent at a reasonable cost? Please include comments on the following:

(a) Digital signature technology;

(b) Digital certificate technology;

(c) Other digital credentialing technology;

(d) P3P technology; and

(e) Other secure electronic technologies.

(2) Are infomediary services now widely available to facilitate verifiable parental consent at a reasonable cost?

(3) Is this proposed extension an adequate amount of time considering the current development of secure electronic mechanisms and/or infomediary services for obtaining verifiable parental consent at a reasonable cost? Please include comments on the following:

(a) The anticipated availability of secure electronic mechanisms and/or infomediary services;

(b) The anticipated affordability of secure electronic mechanisms and/or infomediary services; and

(c) The likelihood and timeframe of consumer adoption of secure electronic mechanisms and/or infomediary services.

(4) Should the extension be longer than two years?

(5) Rather than be extended, should the sliding scale mechanism be kept in place indefinitely, until the development of secure electronic mechanisms and/or infomediary services become widely available to facilitate verifiable parental consent at a reasonable cost?

(6) What, if any, will be the negative impact of extending the time period for the sliding scale mechanism for obtaining verifiable parental consent? Please include comments on whether the extension will serve as a disincentive for industry to develop secure electronic mechanisms and/or infomediary services to facilitate verifiable parental consent at a reasonable cost.

List of Subjects in 16 CFR Part 312

Children, Communications, Consumer protection, Electronic mail, E-mail, Internet, Online service, Privacy, Record retention, Safety, Science and technology, Trade practices, Website, Youth.

Accordingly, the Federal Trade Commission proposes to amend 16 CFR Part 312 as follows:

PART 312—CHILDREN'S ONLINE PRIVACY PROTECTION RULE

1. The authority citation for part 312 continues to read as follows:

Authority: 15 U.S.C. 6501 *et seq.*

2. Amend § 312.5 by revising the second sentence of paragraph (b)(2) to read as follows:

§ 312.5 Parental consent.

* * * * *

(b) * * *

(2) * * * *Provided that:* For the period until April 21, 2004, methods to obtain verifiable parental consent for uses of information other than the ''disclosures'' defined by § 312.2 may also include use of e-mail coupled with additional steps to provide assurances that the person providing the consent is the parent. * * *

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 01–27390 Filed 10–30–01; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 627, 635, 636, 637 and 710

[FHWA Docket No. FHWA–2000–7799]

RIN 2125–AE79

Design-Build Contracting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document corrects a typographical error in the FHWA's notice of proposed rulemaking (NPRM), published on October 19, 2001, at 66 FR 53288. The NPRM proposes the implementation of regulations for design-build contracting as mandated by

section 1307(c) of the Transportation Equity Act for the 21st Century (TEA–21). The docket number that appeared in the heading of the NPRM was incorrect. This notice provides the correct docket number regarding the design-build contracting NPRM as FHWA–2000–7799.

DATES: Written comments to the NPRM must be received on or before December 18, 2001. Late comments will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Yakowenko, Office of Program Administration (HIPA), (202) 366–1352, or Mr. Harold Aikens, Office of the Chief Counsel (202) 366–1373, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Federal Register Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Federal Register's homepage at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

On October 19, 2001, at 66 FR 53288, the FHWA issued a NPRM regarding the implementation of regulations for design-build contracting as mandated by section 1307(c) of the TEA–21. The heading of this NPRM inadvertently referenced an incorrect docket number, FHWA–2000–7790 (this docket number references a final rule published by the Coast Guard). The purpose of this notice is to correct the docket number for the design-build contracting NPRM. The correct docket number for the design-build contracting NPRM is FHWA–2000–7799. All written comments submitted to the docket in response to the October 19, 2001, NPRM should reference the correct docket number, FHWA–2000–7799.

Authority: 23 U.S.C. 315; sec. 1307(c) of Pub. L. 105–178, 112 Stat. 107 (1998); 49 CFR 1.48.

Issued on: October 26, 2001.

Mary E. Peters,

Federal Highway Administrator.

[FR Doc. 01–27401 Filed 10–26–01; 3:47 pm]

BILLING CODE 4910–22–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–7095–9]

RIN 2060–AJ76

Prohibition on Gasoline Containing Lead or Lead Additives for Highway Use: Fuel Inlet Restrictor Exemption for Motorcycles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Today's proposed rule exempts motorcycles with emission control devices that could be affected by the use of leaded gasoline from having to be equipped with gasoline tank filler inlet restrictors. As before, motorcycles and other motor vehicles without such emission control devices are not required to be equipped with gasoline tank filler inlet restrictors.

The Clean Air Act and corresponding EPA regulations prohibit gasoline containing lead or lead additives (leaded gasoline) as a motor vehicle fuel after December 31, 1995. As a deterrent to misfueling prior to that date, the EPA regulations required filler inlet restrictors on motor vehicles equipped with an emission control device that could be affected by the use of leaded gasoline, such as a catalytic converter. EPA retained that provision after 1995 because the filler inlet restrictor, besides being a deterrent to misfueling, has also been incorporated into the design of some vapor recovery gasoline nozzle spouts. Gasoline tank filler inlet restrictors do not work well with most motorcycle fuel tanks, especially the saddle type of tank, because of their shallow depth. A gasoline tank filler inlet restrictor may cause gasoline spitback or spillage when a motorcycle is refueled, which increases evaporative emissions. Today there is relatively little risk of misfueling a motorcycle. Also, it is unlikely that a gasoline tank filler inlet restrictor on a motorcycle helps to control gasoline vapors when the motorcycle is refueled.

DATES: Comments on this proposed rule must be received in writing by November 30, 2001.

ADDRESSES: Materials relevant to this rule are available for inspection in public docket A-2001–17 at the Air Docket Office of the EPA, Room M–1500, 401 M Street, S.W., Washington, D. C. 20460, (202)260–7548, between the hours of 8:00 a.m. to 5:30 p.m., Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Richard Babst at (202) 564–9473, facsimile: (202) 565–2085, e-mail address: *babst.richard@epa.gov.*

SUPPLEMENTARY INFORMATION: For more information on this proposal, please see EPA's direct final rule published in the Rules and Regulations section of this **Federal Register** which amends the regulations to exempt motorcycles from the tank filler inlet restrictor provision of 40 CFR 80.24(b). The Agency views this direct final rule as a noncontroversial action for the reasons discussed in the Direct Final Rule published in today's **Federal Register**. If no adverse or critical comments or requests for a public hearing are received in response to this proposal, no further action is contemplated in relation to this rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (Oct. 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 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 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 proposed action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and therefore is not subject to these requirements.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) Public Law 104–4 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local and tribal governments in the aggregate, or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more 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 affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's rule exempts motorcycles from a current provision that requires them, under certain circumstances, to be equipped with fuel inlet restrictors, and thus avoids the costs imposed by the existing Federal regulations. Today's rule, therefore, is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. As discussed above, the proposed rule is a deregulatory action and affects only motorcycle manufacturers.

D. 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, Apr. 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 the Executive Order because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. EPA reduced the content of lead in leaded gasoline, because EPA found that lead particle emissions from motor vehicles presented a significant risk of harm to the health of urban populations, especially children (38 FR 33734, Dec. 6, 1973). Congress ultimately banned the use of leaded gasoline in motor vehicles after 1995. 42 U.S.C. 7545(n). Gasoline tank filler inlet restrictors were related to the phase-out of leaded gasoline to prevent a motor vehicle with an emission control device, such as a catalytic converter, from using leaded gasoline. Leaded gasoline can damage such emission control devices. Today there is relatively little risk of misfueling a motorcycle with an emission control device that could be damaged by the use of leaded gasoline, because leaded gasoline has now been banned from use in all motor vehicles for over five years and is generally no longer available for sale at gasoline filling stations.

The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that assessed results of early life exposure to lead, evaporative gasoline emissions, or ozone (caused by any increased evaporative emissions) resulting from the absence of fuel filler neck restrictors on motorcycles that are equipped with emission control devices that are impacted by the use of leaded gasoline.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, Aug. 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. Today's proposed rule eliminates the existing requirement that manufacturers of motorcycles must equip certain motorcycles with fuel tank filler inlet restrictors. Thus, Executive Order 13132 does not apply to this proposed rule.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub L. No. 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., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of

the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

G. Regulatory Flexibility Act (RFA), as Amended by the 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 today's proposed rule on small entities, small entity is defined as: (1) A small business, including its affiliates, that has a maximum of 1,000 employees (13 CFR 121.201 for SIC code 3711 ''Motor Vehicles and Passenger Car Bodies''); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. Sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's proposed rule is a deregulatory action and affects all motorcycle manufacturers. It eliminates the existing requirement that manufacturers of motorcycles must equip certain motorcycles with fuel tank filler inlet restrictors. We have therefore concluded that today's proposed rule will relieve regulatory burden for any small entity.

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.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

On January 1, 2001 Executive Order 13084 was superseded by Executive Order 13175. However, this proposed rule was developed during the period when Executive Order 13084 was still in force, and so tribal considerations were addressed under Executive Order 13084. Development of the final rule will address tribal considerations. Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, Nov. 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Today's 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. The proposed rule affects the applicability of the fuel tank filler inlet restrictor to motorcycles. It therefore affects only manufacturers of motorcycles. Thus, Executive Order 13175 does not apply to this proposed rule.

I. 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.

J. Electronic Copies of Rulemaking

For more information about this proposed rule and more details as described in the preamble to the direct final rule see a copy of this rule on the Internet at *http://www.epa.gov/otaq* under the title: ''Proposed Rule—Prohibition on Gasoline Containing Lead or Lead Additives for Highway Use: Fuel Inlet Restrictor Exemption for Motorcycles.''

K. Statutory Authority

Authority for this action is in sections 211, and 301(a) of the Clean Air Act, 42 U.S.C. 7545, 7601(a).

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Motor vehicle and motor vehicle engines, Motor vehicle pollution, Penalties.

Dated: October 24, 2001.

Christine Todd Whitman,

Administrator.

[FR Doc. 01–27379 Filed 10–30–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 01J–2]

Federal-State Joint Board on Universal Service Seeks Comment on Review of Lifeline and Link-Up Service for all Low-Income Consumers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; solicitation of comments.

SUMMARY: In a public notice released on October 12, 2001, the Federal-State Joint Board on Universal Service (Joint Board) invites comment regarding its review of Lifeline/Link-Up, two federal support programs that are used to preserve and advance universal service and to ensure that quality telecommunications and information services are available to low-income consumers at just, reasonable and affordable rates, as required by the Telecommunications Act of 1996.

DATES: Submit comments on or before December 31, 2001. Submit reply comments on or before February 28, 2002.

ADDRESSES: *See* Supplementary Information section for where and how to file comments.

FOR FURTHER INFORMATION CONTACT: Anita Cheng or Dana Bradford, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400 TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: The full text of this document is available for public inspection and copying during regular business hours at 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 copy 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.*

I. Background

Since 1984, the Commission, in conjunction with the states and local telephone companies, has administered a Lifeline program designed to promote universal service by providing low-income individuals with monthly discounts on the cost of receiving telephone service. The Commission also established ''Link-Up America,'' a program designed to help low-income individuals pay the initial costs of commencing telephone service. In June 2000, the Commission expanded the Lifeline and Link-Up programs to provide additional discounts to those individuals living on Indian reservations.

In the 1996 *Joint Board Recommended Decision*, 61 FR 63778, December 2, 1996), the Joint Board determined that Congress's intent would best be served if all low-income consumers had access to Lifeline/Link-Up assistance. Accordingly, the Joint Board found that the goal of increasing low-income subscribership would best be met if the Commission maintained the basic framework for administering Lifeline/Link-Up qualification in states that provide matching support from the intrastate jurisdiction, with the criteria to be based solely on income or factors directly related to income. The Joint Board also recommended that for states choosing not to provide intrastate matching support, the Commission should adopt specific default means-tested eligibility standards.

Consistent with the Joint Board's recommendations, the Commission maintained the basic framework for administering the Lifeline program that existed prior to the adoption of the *Universal Service Order*, 62 FR 32862, June 17, 1997. The Commission also adopted the Joint Board's recommendation to apply a specific, means-tested eligibility standard, by requiring participation in Medicaid, food stamps, Supplementary Security Income (SSI), Federal public housing assistance (Section 8), or Low Income Home Energy Assistance Program (LIHEAP), in order for an individual to be eligible for Lifeline/Link-Up in states that choose not to provide matching support from the intrastate jurisdiction.

An individual living on tribal lands may also qualify for Lifeline/Link-Up assistance if he/she certifies participation in one of the following Federal programs: Bureau of Indian Affairs general assistance, Tribally-administered Temporary Assistance for Needy Families; Head Start (only for those meeting its income qualifying standard); or National School Lunch Program.

In the *Universal Service Order*, the Commission explained that: ''We clarify, however, that the Joint Board recommendation, which we adopt, requires states to base eligibility on income or factors directly related to income and merely suggests using participation in a low income assistance program as the criterion.'' The Commission further explained that: ''[w]e have tied the default Lifeline qualification standards (which will apply in states that do not provide intrastate funds) to programs that commenters believe to be unaffected or minimally affected by the new welfare legislation. We will, however, continue to monitor the situation and may make further changes in the future if it appears that changes to other programs unduly limit Lifeline eligibility.''

On December 21, 2000, the Commission referred the low-income support issues to the Joint Board and stated: ''* * * we ask the Joint Board to undertake a review of Lifeline and Link-Up service for all low-income customers, including a review of the income eligibility criteria.''

A. The Effectiveness of the Current Lifeline/Link-Up Program

According to the 2001 *Trends in Telephone Service Report*, an estimated 5.9 million consumers paid reduced rates for local telephone service under the low-income provisions of the Lifeline program in 2000. Since the inception of the Link-Up America program in 1987, approximately 10.6 million low-income consumers have been able to initiate telephone service using Link-Up. We note that, in a recent study, the Missouri Office of Public Counsel estimated that 26 percent of households with incomes at or below 150 percent of the Federal poverty level take advantage of the Lifeline/Link-Up program.

We invite parties to develop a full record on the effectiveness of the Commission's existing Lifeline/Link-Up rules. In particular, we seek comment from all interested parties who may have data on the Lifeline/Link-Up enrollment in each state. Commenters should provide information on the number and percentage of low-income households that are with and without telephones within the living unit; the number and percentage of low-income households who receive Lifeline/Link-Up support; the number and percentage of low-income households who do not receive Lifeline/Link-Up support; and the number and percentage of households that are low-income and not enrolled in Federal assistance programs. Where possible, commenters should break these figures into on-reservation and off-reservation categories.

The *2001 Trends Report* includes some of the information we seek; however, states and/or telecommunications companies may have gathered more comprehensive information concerning Lifeline/Link-Up enrollment in their respective state(s). In the interest of compiling the most complete and accurate record, we therefore encourage commenters to provide as much detail as possible with respect to Lifeline/Link-Up enrollment, including the source of the information, when and how this information was compiled, or other information the commenters believe to be relevant.

We also invite parties to discuss the reasons that some low-income individuals are not receiving Lifeline/Link-Up assistance. For example, these individuals may be excluded from qualifying programs because of federal or state program restrictions; they may not be receiving adequate information about the Lifeline/Link-Up program; or they may be excluding themselves by choice from participating in qualifying programs.

We also seek comment regarding welfare reform and its impact on the number of low-income households that are participating in Lifeline/Link-Up. In particular, we seek comment on whether the number of low-income households eligible for Lifeline/Link-Up assistance has changed as a result of state and federal efforts to reduce the number of participants in welfare programs such as food stamps, SSI, LIHEAP, etc.

We encourage commenters to discuss whether there are other reasons that low-income individuals may not enroll in qualifying programs or participate in Lifeline/Link-Up. Commenters also should discuss whether existing or proposed qualification standards and enrollment procedures may serve to encourage or discourage increased participation among all low-income households.

In addition, there may be special concerns regarding recent immigrants, individuals living on reservations, and other groups that may need to be considered. In this regard, we invite comment on the extent to which immigrants may be underrepresented in public assistance programs for legal or social reasons. Commenters also should discuss whether individuals living on reservations face barriers to participation and what modifications to the Lifeline/Link-Up program may be necessary to overcome those barriers.

Moreover, we seek comment on the innovative ways in which states are implementing their respective Lifeline/Link-Up programs. Specifically, commenters should discuss what steps have been taken to increase Lifeline/Link-Up subscribership in their respective state(s). Commenters should also discuss ways in which successful state methods could be implemented at the federal level.

B. Modifying the Existing Lifeline/Link-Up Rules

We seek comment on whether changes to the current Lifeline/Link-Up program are warranted to further the goal of bringing affordable rates to low-income consumers. We discuss various possible changes below.

1. Eligibility Criteria

We seek comment on whether the current eligibility criteria should be modified. Specifically, commenters should address whether new eligibility criteria should be added to the existing list for Lifeline/Link-Up and enhanced Lifeline/Link-Up, or whether particular eligibility criteria should be deleted from the existing list.

Commenters also should discuss whether there are programs used by states that are particularly effective in determining eligibility for Lifeline/Link-Up assistance. In addition, commenters should discuss how modifications to the current federal eligibility criteria may impact state Lifeline/Link-Up programs.

As indicated, a state that has its own Lifeline/Link-Up program establishes the eligibility criteria for that program. As such, these criteria vary from state to state. To the extent a state has its own Lifeline/Link-Up program, we seek comment on the specifics of the eligibility criteria used. We also seek comment on whether all states should be required to include, at a minimum, the federal eligibility criteria in their respective programs or whether we should adopt one national standard for purposes of determining eligibility.

Moreover, we invite comment on whether individuals should be able to qualify for Lifeline/Link-Up support merely by being eligible for low-income assistance programs, rather than actually participating in them. If the Commission were to adopt such a standard, we invite comment on how eligibility might be certified or verified.

Commenters also are encouraged to discuss whether low-income individuals should be removed immediately from Lifeline enrollment when they no longer meet the eligibility standards, or whether Lifeline enrollment should be guaranteed for a specified minimum period of time.

We also seek comment on whether eligibility based on income level should be added to the existing eligibility standards as an additional means to qualify for Lifeline/Link-Up. In the *Twelfth Report and Order,* 65 FR 47941, August 4, 2000, the Commission stated its intent to examine, in consultation with the Joint Board, revisions to § 54.409 of the Commission's rules to provide for eligibility based solely on income level. We seek comment on whether this approach would reach more or fewer low-income consumers than the federal criteria, which condition eligibility on participation in low-income assistance programs. We invite comment on what the appropriate income level might be, if an income-based test is used. Commenters should discuss whether the Federal Poverty Guidelines or some other mechanism should be used to establish an appropriate income level.

Commenters also should discuss how an individual may qualify for Lifeline/Link-Up support under an income-based standard; how an individual might certify his/her income level; and what, if any, special procedures should be implemented to verify an individual's income level.

2. Application/Verification

We invite comment on the Lifeline/Link-Up application process. Currently, in order to receive Lifeline/Link-Up support under federal criteria, a consumer must certify that he/she participates in at least one of the qualifying federal programs set forth. Under the federal criteria of the Commission's Lifeline/Link-Up rules, certification of participation in a federal assistance program is accomplished in the following manner: the eligible telecommunications carrier that is providing Lifeline/Link-Up service to the low-income consumer obtains the consumer's signature on a document certifying under penalty of perjury that the consumer receives benefits from at least one of the qualifying programs. The consumer also must identify the program or programs from which he/she receives benefits and must agree to notify the carrier if he/she ceases to participate in the identified program(s). We invite comment on whether this process effectively targets support. In this regard, commenters should discuss what application procedures should be considered in order to promote an efficient and effective Lifeline/Linkup program, including increasing participation where appropriate.

We also seek comment on whether an individual's eligibility to receive Lifeline/Link-Up support should be verified, and if so, what the federal verification measures should be (*e.g.,* requiring consumers to provide a copy of a food stamp coupon in order to receive support). We seek comment on the effects of any proposed verification procedures on enrollment, on the costs of administration, and on the effectiveness of the program. For instance, commenters should discuss whether verification of eligibility should occur periodically or whether the subscriber should be required to notify the carrier when he/she is no longer eligible to receive Lifeline/Link-Up assistance. In addition, we encourage commenters to provide information concerning best practices of states with regard to certification and/or verification procedures and whether those procedures have been successful. We also ask commenters to provide information on the extent and frequency of any fraudulent or otherwise inappropriate enrollment in Lifeline or Link-Up programs, or any other problems that lead to improper program expenditures. We seek comment on any problems relating to our existing procedures and also on any problems that could result from adopting new qualifying standards.

Finally, we seek comment regarding automatic enrollment and verification methods that could assist the states in more readily identifying low-income households that qualify for Lifeline/Link-Up, and reduce delay and inefficiency in the processing of applications.

3. Additional Modifications

We invite comment on the ways in which the Federal Lifeline/Link-Up program could be improved. For example, commenters may wish to discuss whether increased or alternative methods of Link-Up support would improve the Lifeline program.

We also seek comment regarding impediments that may prevent low-income households from obtaining affordable access to the network, including existing credit, collections,

and disconnection policies and service application procedures that are required by local exchange companies. Commenters are requested to suggest alternatives to those procedures that are identified as impediments.

Commenters also are requested to provide information about specific procedures that have been adopted to eliminate impediments and provide efficient processing of Lifeline/LinkUp applications without undue delay. We are particularly interested in learning about specific credit and collection procedures that have resulted in increased subscribership in low-income households.

Commenters also should discuss whether there are initiatives in addition to Lifeline/Link-Up that could increase telephone subscribership among low-income households.

C. Outreach

In the *Twelfth Report and Order,* the Commission amended §§ 54.405 and 54.411 of its rules to require eligible telecommunications carriers to publicize the availability of Lifeline/Link-Up services in a manner reasonably designed to reach those likely to qualify for those services. We seek comment on whether more extensive consumer education and outreach efforts are necessary to increase participation in the Lifeline/Link-Up program. We recognize that many carriers and states have been successful in locating and informing low-income consumers of the Lifeline/Link-Up program by various measures, such as mailings, hanging posters in churches and community centers, placing advertisements in local newspapers, and in some cases, canvassing. We seek comment on whether these efforts have been sufficient to educate low-income individuals about their telecommunications options. We encourage states, carriers, and interested non-profit organizations to continue to develop innovative consumer education and outreach programs that will increase public awareness and understanding of Lifeline/Link-Up. The Joint Board and the Commission are committed to working together to increase participation in these programs as well.

To this end, we invite comment on the best practices of states, telecommunications companies, and non-profit organizations with regard to increasing participation in the Lifeline/Link-Up program, including outreach efforts, assisting individuals in enrolling in Lifeline/Link-Up, and assisting in eligibility verification. Commenters should discuss the costs and benefits of preparing and distributing information to the public. Commenters also should discuss whether existing websites on Lifeline/Link-Up provide adequate information. We encourage commenters to provide as much detail as possible with respect to their consumer education and outreach efforts. Commenters also may wish to identify specifically those non-profit organizations that may be able to assist with consumer outreach efforts, Lifeline/Link-Up enrollment, and any eligibility verification procedures that may be adopted. In addition, commenters should discuss whether the Commission should adopt specific outreach requirements if current outreach efforts are not effectively providing Lifeline/Link-Up information to low-income consumers. We ask commenters to provide detailed comment on these as well as any other issues relating to Lifeline/Link-Up that they wish to raise.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before December 31, 2001, and reply comments on or before February 28, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24,121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and CC Docket No. 96–45. Parties also may submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and 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. Parties who choose to file by paper must file an original and four copies of each filing.

All paper filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties who choose to file by paper also should send three copies of their filings to Sheryl Todd, Accounting Policy Division, 445 12th Street, SW., Room 5–B540, Washington, DC 20554. In addition, parties who choose to file by paper must send copies of their comments on diskette to the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Such submissions should be on a 3.5-inch diskette formatted in an IBM-compatible format using Word 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, CC Docket No. 96–45, the type of pleading (comment or reply comment), the 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.

The full text of this document is available for public inspection and copying during regular business hours at 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.*

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 01–27229 Filed 10–30–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2468, MM Docket No. 01–306, RM–10152]

Digital Television Broadcast Service; Hartford, CT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Fox Television Stations, Inc., requesting the substitution of DTV channel 31 for DTV channel 5 for Tribune Television Corporation's station WTIC–TV at Hartford, Connecticut. DTV Channel 31 can be allotted to Hartford, Connecticut, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (41–42–13 N. and 72–49–57 W.). However, since the community of Hartford is located within 400

kilometers of the U.S.-Canadian border, concurrence of the Canadian government must be obtained for this allotment. As requested, we propose to allot DTV Channel to 31 with a power of 500 and a height above average terrain (HAAT) of 492 meters.

DATES: Comments must be filed on or before December 17, 2001, and reply comments on or before January 2, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John C. Quale, Skadden, Arps, Slate, Meagher & Flom LLP, 1440 New York Avenue, NW., Washington, DC 20005 (Counsel for Fox Television Stations, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–306, adopted October 25, 2001, and released October 26, 2001. 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

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION 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 Connecticut is amended by removing DTV Channel 5 and adding DTV Channel 31 at Hartford.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–27346 Filed 10–30–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2445; MM Docket No. 01–304, RM–10309; MM Docket No. 01–305, RM–10310.

Radio Broadcasting Services: Menard, TX; San Isidro, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Jeraldine Anderson, proposing the allotment of Channel 287C3 at Menard, Texas, as the community's second local aural transmission service. Channel 287C3 can be allotted to Menard in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.9 kilometers (7.4 miles) southwest of Menard. The coordinates for Channel 287C3 at Menard are 30–52–29 North Latitude and 99–54–00 West Longitude. The Commission also requests comments on a petition filed by Jeraldine Anderson proposing the allotment of Channel 247A at San Isidro, Texas, as the community's first local aural transmission service. Channel 247A can be allotted to San Isidro in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.2 kilometers (2.6 miles) northeast of San Isidro. The coordinates for Channel 247A at San Isidro are 26–45–00 North Latitude and 98–26–00 West Longitude.

DATES: Comments must be filed on or before December 10, 2001, and reply comments on or before December 26, 2001.

ADDRESSES: Federal Communications Commission, Washington, D.C., 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner for both proposals, as follows: Jeraldine Anderson; 1702 Cypress Drive; Irving, Texas 75601.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–304 and MM Docket No. 01–305, adopted October 10, 2001, and released October 19, 2001. 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

Radio broadcasting.

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

The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. §§ 154, 303, 334, and 336.

§ 73.202 [Amended]

1. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 287C3 at Menard, and San Isidro, Channel 247A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–27347 Filed 10–30–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2446, MM Docket No. 01–303, RM–10306]

Radio Broadcasting Services; Birch Tree, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Charles Crawford proposing the allotment of Channel 241A at Birch Tree, Missouri, providing the community with additional local FM service. The coordinates for Channel 241A at Birch Tree are 36–55–35 and 91–24–23. There is a site restriction 10.5 kilometers (6.5 miles) southeast of the community.

DATES: Comments must be filed on or before December 10, 2001, and reply comments on or before December 26, 2001.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–303, adopted October 10, 2001 and released October 19, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision 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 l980 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* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Channel 241A at Birch Tree.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–27348 Filed 10–30–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 01–290; FCC 01–307]

Implementation of the Cable Television Consumer Protection and Competition Act of 1992 and the Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act—Sunset of Exclusive Contract Prohibition.

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission issues this document in accordance with section 628(c)(5) of the Communications Act of 1934, as amended. Section 628(c)(2)(D) generally prohibits, in areas served by a cable operator, exclusive contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators. Under section 628(c)(5), the prohibition on exclusive programming contracts contained in section 628(c)(2)(D) will cease to be effective on October 5, 2002, unless the Commission finds that such prohibition continues to be necessary to preserve competition and diversity in the distribution of video programming. The document initiates a proceeding in order to make that determination.

DATES: Comments are due December 3, 2001 and reply comments are due January 7, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition, to filing comments with the secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov,* and to Edward C. Springer, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Room 10236, NEOB, Washington, DC 20503 or via the Internet to *Edward.Springer@.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Karen A. Kosar, Cable Services Bureau at 202–418–1053 or via the Internet at *kkosar@fcc.gov.* For additional information concerning the information collection(s) contained in this NPRM, contact Judy Boley at 202–418–0214, or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of a Notice of Proposed Rulemaking (NPRM) initiating the proceeding in CS-Docket No. 01–290. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, S.W. Room CY–B402, Washington, DC 20554.

This NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this

NPRM; OMB notification of action is due December 31, 2001. 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; and (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.

OMB Control Number: 3060–0551.

Title: Section 76.1002 Specific Unfair Practices Prohibited.

Form No.: N/A.

Type of Review: Revision.

Respondents: Business or other for-profit.

Number of Respondents: 52 (26 petitions and 26 oppositions).

Estimated Time Per Response: 1 hour–25 hours. We estimate that the total burden for completion of all aspects of the proceeding will be no more than 25 hours. We estimate that 50% of entities will use outside counsel and will undergo a burden of 1 hour to coordinate information with outside counsel.

Total Annual Burden: 676 hours. (26 respondents with outside counsel × 1 hour = 26 hours. 26 respondents with outside counsel × 25 hours = 650 hours.

Total Annual Costs: $97,500.00 26 respondents using outside counsel at $150 per hour= 26 × 25 × $150 = $97,500.00.

Needs and Uses: This information is used by Commission staff to determine on a case-by-case basis whether particular exclusive contracts for cable television programming comply with the statutory public interest standard of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992 and Section 628 of the Communications Act, as amended. Section 301(j) of the 1996 Act amends the restriction in section 628 to include common carriers and their affiliates that provide video programming.

Synopsis of the NPRM

1. This Notice of Proposed Rulemaking involves the possible sunset of section 628(c)(2)(D) of the Communications Act, which generally prohibits, in areas served by a cable operator, exclusive contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators. Pursuant to section 628(c)(5), the prohibition on exclusive programming contracts contained in section 628(c)(2)(D) will cease to be effective on October 5, 2002, unless the Commission conducts a proceeding and finds that such prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.

2. The program access provisions contained in section 628 of the Communications Act were adopted as part of the Cable Television Consumer Protection and Competition Act of 1992. When adopting the statute, Congress was concerned by its finding that a majority of cable operators enjoyed a monopoly in program distribution at the local level, and concluded that the use of exclusive contracts between vertically integrated programming vendors and cable operators served to inhibit the development of competition among distributors.

3. Section 628(c) instructs the Commission to adopt regulations to prohibit a number of specific practices. For example, Congress absolutely prohibited exclusive contracts between vertically integrated programming vendors and cable operators in areas unserved by cable, and, pursuant to section 628(c)(2)(D), generally prohibited exclusive contracts within areas served by cable. Congress recognized, however, that in areas served by cable some exclusive contracts between vertically integrated programming vendors and cable operators may serve the public interest. Accordingly, in determining whether an exclusive contract is in the public interest for purposes of section 628(c)(2)(D), Congress instructed the Commission to consider the factors outlined in section 628(c)(4). The prohibition contained in section 628(c)(2)(D) regarding restrictions on exclusive contracts is not unlimited and Congress determined that after a ten-year period the Commission should determine in a proceeding conducted pursuant to section 628(c)(5) whether such prohibition continues to be necessary.

4. The Notice seeks comment on: (1) Whether section 628(c)(2)(D) of the Communications Act should cease to be effective pursuant to the sunset provision contained in section 628(c)(5); (2) the effect, if any, section 628(c)(2)(D) has had on competition in local and national markets; (3) the degree to which, if at all, clustering and the continuing consolidation within the communications industry should inform our decision on the possible sunset of the exclusivity prohibition; (4) the effects of exclusivity in the multichannel video programming marketplace; (5) the impact the prohibition on exclusivity has had on diversity in programming; (6) whether it would be advisable, and consistent with the Commission's statutory authority, to retain the rule only for some types of programming or in some specific cases; (7) how other program access provisions would function should the exclusivity prohibition sunset; (8) what future procedures the Commission should undertake if the prohibition on exclusivity is retained; and (9) any other issues appropriate to our inquiry in accordance with section 628(c)(5).

Initial Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act of 1980, as amended, (''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 referenced in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to this IRFA and must be filed by the deadlines for comments in the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the IRFA (or summaries thereof) will be published in the **Federal Register**.

I. Need for, and Objectives of, the Proposed Regulatory Approaches

6. The purpose of section 628 of the Communications Act is to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video market, to increase the availability of satellite cable programming and satellite broadcast programming to persons in rural and other areas not currently able to receive such programming, and to spur the development of communications technologies. Specifically, this proceeding involves section 628(c)(2)(D), which prohibits, in areas served by a cable operator, exclusive contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators unless the Commission determines that such exclusivity is in the public interest. The exclusivity prohibition set forth in section 628(c)(2)(D) ceases to be effective after a 10-year period ending October 5, 2002. Section 628(c)(5) of the Communications Act requires that restrictions on exclusive contracts, within areas served by cable, are to sunset unless the Commission finds, in

a proceeding conducted during the last year of such 10-year period, that such prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming. Pursuant to this statutory mandate and by this Notice of Proposed Rulemaking, we seek comment on whether section 628(c)(2)(D) should be retained or eliminated.

II. Legal Basis

7. The authority for the action proposed in this rulemaking is contained in section 4(i), 303 and 628 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303 and 548.

III. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

8. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental 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 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'').

9. SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,758 total cable and other pay television services and 1,423 had less than $11 million in revenue. We address below each service individually to provide a more precise estimate of small entities.

10. *Cable Systems:* The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. We last estimated that there were 1,439 cable operators that qualified as small cable companies. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules proposed in this NPRM.

11. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 67,700,000 subscribers in the United States. Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 677,000 subscribers or less totals approximately 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

12. *Open Video Systems:* Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of ''Cable and Other Pay Television Services.'' This definition provides that a small entity is one with $11 million or less in annual receipts. The Commission has certified approximately 25 OVS operators to serve 75 areas, and some of those are currently providing service. Affiliates of Residential Communications Network, Inc. (''RCN'') received approval to operate OVS systems in New York City, Boston, Washington, D.C. and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

13. *Program Producers and Distributors:* The Commission has not developed a definition of small entities applicable to producers or distributors of cable television programs. Therefore, we will use the SBA classifications of Motion Picture and Video Tape Production (NAICS Code 51211), Motion Picture and Video Tape Distribution (NAICS Code 42199), and Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services (NAICS Codes 56131, 71111, 71141, 561599, 71151, 71112, 71132, 51229, 53249). These SBA definitions provide that a small entity in the cable television programming industry is an entity with $21.5 million or less in annual receipts for NAICS Codes 51211, 42199 and 51212, and $5 million or less in annual receipts for NAICS Codes 56131, 71111, 71141, 561599, 71151, 71112, 51229, and 53249. Census Bureau data indicate the following: (a) There were 7,265 firms in the United States classified as Motion Picture and Video Production (NAICS Code 51211), and that 6,987 of these firms had $16.999 million or less in annual receipts and 7,002 of these firms had $24.999 million or less in annual receipts; (b) there were 1,139 firms classified as Motion Picture and Video Tape Distribution (NAICS Codes 42199 and 51212), and 1007 of these firms had $16.999 million or less in annual receipts and 1013 of these firms had $24.999 million or less in annual receipts; and (c) there were 5,671 firms in the United States classified as Theatrical Producers and Services (NAICS Codes 56131, 71111, 71141, 561599, 71151, 71121, 51229, and 53249), and 5627 of these firms had $4.999 million or less in annual receipts.

14. Each of these NAICS categories are very broad and include firms that may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms exclusively produce and/or distribute programming for cable television or how many are independently owned and operated. Thus, we estimate that our rules may affect approximately 6,987 small entities primarily engaged in the production and distribution of taped cable television programs and 5,627 small producers of live programs that may be affected by the rules adopted in this proceeding.

15. *Direct Broadcast Satellite Service (''DBS''):* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of ''Cable and Other Pay Television Services.'' This definition provides that a small entity is one with $11 million or less in annual receipts. There are four licensees of DBS services under part 100 of the Commission's rules. Three of those

licensees are currently operational. Two of the licensees that are operational have annual revenues that may be in excess of the threshold for a small business. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge that there are entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

16. *Home Satellite Dish Service (''HSD'):* Because HSD provides subscription services, HSD falls within the SBA-recognized definition of ''Cable and Other Pay Television Services.'' This definition provides that a small entity is one with $11 million or less in annual receipts. The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

17. According to the most recently available information, there are approximately four program packagers nationwide offering packages of scrambled programming to retail consumers. These program packagers provide subscriptions to approximately 1,476,700 subscribers nationwide. This is an average of about 370,000 subscribers per program package. This is smaller than the 400,000 subscribers used in the commission's definition of a small MSO. Furthermore, because this is an average, it is likely that some program packagers may be substantially smaller.

18. *Multipoint Distribution Service (''MDS''), Multichannel Multipoint Distribution Service (''MMDS'') and Local Multipoint Distribution Service (''LMDS''):* MMDS systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (''MDS'') and Instructional Television Fixed Service (''ITFS''). LMDS is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.

20. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (''BTAs''). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes multipoint distribution services, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $11 million annually. Therefore, for purposes of the IRFA, we find there are approximately 850 small MDS providers as defined by the SBA and the Commission's auction rules.

21. The SBA definition of small entities for pay television services, which includes such companies generating $11 million in annual receipts, appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

22. Additionally, the auction of the 1,030 LMDS licenses began on February 18, 1998 and closed on March 25, 1998. The Commission defined ''small entity'' for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding calendar years. These regulations defining ''small entity'' in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

23. In sum, there are approximately a total of 2,000 MDS/MMDS/LMDS stations currently licensed. Of the approximate total of 2,000 stations, we estimate that there are 1,595 MDS/MMDS/LMDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

24. *Satellite Master Antenna Television (''SMATV'') Systems.* The SBA definition of small entities for ''Cable and Other Pay Television Services'' specifically includes SMATV services and, thus, small entities are defined as all such companies generating $11 million or less in annual receipts. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of June 2000. The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a

substantial number of SMATV operators qualify as small entities.

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

25. The NPRM seeks comment on the sunset of section 628(c)(2)(D) of the Communications Act. The NPRM does not propose any specific reporting, recordkeeping or other compliance requirements.

V. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

26. The RFA requires an agency to describe any significant alternatives that it has considered in proposing regulatory approaches, which may include the following four alternatives: (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. The NPRM seeks comment on whether section 628(c)(2)(D) should cease to be effective, pursuant to the sunset provision in section 628(c)(5), or whether section 628(c)(2)(D) should be retained. Thus, the NPRM invites comments on a number of issues that may significantly impact small entities. Specifically, the NPRM seeks comment in para. 8 on the effect, if any, section 628(c)(2)D) has had on competition in local and national markets. The NPRM also seeks comment in para. 9 on the degree to which, if at all, clustering and the continuing consolidation within the communications industry should inform the Commission's decision on the possible sunset of the exclusivity prohibition. In para. 10, the NPRM seeks comment on the effects of exclusivity in the multichannel video programming marketplace. In para. 11, the NPRM seeks comment on the impact the prohibition on exclusivity has had on diversity of programming. In para. 12, the NPRM seeks comment on how the program access provisions would function should the exclusivity prohibition sunset. In para.13, the NPRM seeks comment relationship of section 628(c)(2)(D) and section 628(c)(2)(C) of the Act, which affects areas not served by a cable operator. In para. 14, the NPRM seeks comment on how the proliferation of new programming services impacts assumptions with regard to exclusivity. If section 628(c)(2)(D) is retained, the NPRM seeks comment in para. 15 on future procedures necessarily related to the retention of section 628(c)(2)(D).

VI. Federal Rules Which Duplicate, Overlap, or Conflict With the Commission's Proposals

27. There are no federal rules that specifically duplicate, overlap or conflict with the Commission's inquiry with regard to section 628(c)(2)(D).

VII. Report to Congress

28. The Commission will send a copy of the NPRM, including this IRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the NPRM, including IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the NPRM and IRFA (or summaries thereof) will also be published in the **Federal Register**.

Paperwork Reduction Analysis

29. This NPRM contains a proposed information collection. As part of its 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, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due December 31, 2001. Comments should address: (a) Whether the proposed collection 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; and (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.

Ex Parte Presentations

30. This proceeding will be treated as a ''permit-but-disclose'' proceeding, subject to the ''permit-but-disclose'' requirements under § 1.1206(b) of the Commission's rules. Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making oral ex parte presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules.

Comment Dates

31. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before December 3, 2001 and reply comments on or before January 7, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *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.

32. Written comments by the public on the proposed information collection are due on December 3, 2001. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before December 31, 2001. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Edward Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *edward.springer@omb.eop.gov.*

33. Parties who choose to file by paper must file an original and four

copies of each filing. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. If more than one docket or rulemaking number appears in the caption of this proceeding commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington D.C. 20554. The Cable Services Bureau contact for this proceeding is Karen A. Kosar at (202) 418–7200, TTY (202) 418–7172, or at *kkosar@fcc.gov.*

34. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW, CY-A257, Washington, DC 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418–0270, TTY (202) 418–2555, or *bcline@fcc.gov.* Comments and reply comments are available electronically in ASCII text, Word 97, and Adobe Acrobat.

35. This document is available in alternative formats (computer diskette, large print, audio cassette, and Braille). Persons who need documents in such formats may contact Brian Millin at (202) 418–7426, TTY (202) 418–7365, or *bmillin@fcc.fov.*

Ordering Clauses

36. Accordingly, *It is ordered* that, pursuant to the authority contained in sections 4(i), 303 and 628 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303 and 548, *Notice is hereby given* of the proposals described in this Notice of Proposed Rulemaking.

37. *It is further ordered* that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 76

Administrative practice and procedure and Cable television.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 01–27225 Filed 10–30–01; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 66, No. 211

Wednesday, October 31, 2001

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

National Sheep Industry Improvement Center; Solicitation of Nominations of Board Members

AGENCY: National Sheep Industry Improvement Center, USDA.

ACTION: Notice: Invitation to submit nominations.

SUMMARY: The National Sheep Industry Improvement Center announces that it is accepting nominations for the Board of Directors of the National Sheep Industry Improvement Center for two directors' positions whose terms are expiring on February 13, 2002. Both positions are for voting members who are active producers of sheep or goats. Board members manage and oversee the Center's activities. Nominations may only be submitted by National organizations that consist primarily of active sheep or goat producers in the United States and who have as their primary interest the production of sheep or goats in the United States. Nominating organizations should submit:

(1) Substantiation that the nominating organization is national in scope,

(2) The number and percent of members that are active sheep or goat producers,

(3) Substantiation of the primary interests of the organization, and

(4) An Advisory Committee Membership Background Information form (Form AD–755) for each nominee.

This action is taken in accordance with section 759 of the Federal Agriculture Improvement and Reform Act of 1996 for the establishment of a National Sheep Industry Improvement Center.

DATES: The closing date for acceptance of nominations is December 17, 2001. Nominations must be received by, or postmarked, on or before, this date.

ADDRESSES: Submit nominations and statements on qualifications to National Sheep Industry Improvement Center, PO Box 23483, Washington DC 20026–3483 if using USPS or 1400 Independence Ave., SW, Room 2117, Washington, DC 20250–3252, Attn.: National Sheep Improvement Center, Nominations.

FOR FURTHER INFORMATION CONTACT: Jay B. Wilson, Executive Director, National Sheep Industry Improvement Center, PO Box 23483, Washington DC 20026–3483 if using USPS or 1400 Independence Ave, SW., Washington, DC 20250–3252 if using another carrier, telephone (202) 690–0632, (This is not a toll free number.) FAX 202–720–1053.

SUPPLEMENTARY INFORMATION: The Federal Agriculture Improvement and Reform Act of 1996, known as the 1996 Farm Bill, established a National Sheep Industry Improvement Center. The Center shall (1) promote strategic development activities and collaborative efforts by private and State entities to maximize the impact of Federal assistance to strengthen and enhance production and marketing of sheep or goat products in the United States; (2) optimize the use of available human capital and resources within the sheep or goat industries; (3) provide assistance to meet the needs of the sheep or goat industry for infrastructure development, business development, production, resource development, and market and environmental research; (4) advance activities that empower and build the capacity of the United States sheep or goat industry to design unique responses to special needs of the sheep or goat industries on both a regional and national basis; and (5) adopt flexible and innovative approaches to solving the long-term needs of the United States sheep or goat industry. The Center has a Revolving Fund established in the Treasury to carry out the purposes of the Center. Management of the Center is vested in a Board of Directors, which has hired an Executive Director and other staff to operate the Center.

The Board of Directors is composed of seven voting members of whom four are active producers of sheep or goats in the United States, two have expertise in finance and management, and one has expertise in lamb, wool, goat or goat product marketing. Both of the open positions are for voting members who are active producer of sheep or goats in the United States. The Board also includes two non-voting members, the Under Secretary of Agriculture for Rural Development and the Under Secretary of Agriculture for Research, Education, and Economics. Board members will not receive compensation for serving on the Board of Directors, but shall be reimbursed for travel, subsistence, and other necessary expenses.

The Secretary of Agriculture shall appoint the voting members from the submitted nominations. Member's term of office shall be three years. Voting members are limited to two terms. The two positions for which nominees are sought are currently held by one member who is completing a first term and is eligible for reappointment and one member who is serving a second term and is therefore not eligible to be re-nominated. The Board shall meet not less than once each fiscal year, but is likely to meet at least quarterly.

The statement of qualifications of the individual nominees is being obtained by using Form AD–755, ''Advisory Committee Membership Background Information.'' The requirements of this form are incorporated under OMB number 0505–0001.

Dated: October 26, 2001.

Jay B. Wilson,

Executive Director, National Sheep Industry Improvement Center.

[FR Doc. 01–27397 Filed 10–30–01; 8:45 am]

BILLING CODE 135100001–P

DEPARTMENT OF AGRICULTURE

National Sheep Industry Improvement Center; Inviting Grant Proposals for the Sheep and Goat Industry Grant Program

AGENCY: National Sheep Industry Improvement Center, USDA.

ACTION: Notice.

SUMMARY: The National Sheep Industry Improvement Center (NSIIC) announces the availability of approximately $200,000 in competitive grants for product or business development, producer information or education, marketing and promotion for sheep or goats or their products, genetic retention or animal health. Funds have been made available by the Board of Directors of the National Sheep Industry Improvement Center (NSIIC) to be awarded in Fiscal Year (FY) 2002 with projects completed by the end of FY 2003. The intent is to fund a variety of

proposals that will benefit the U.S. sheep and goat industries.

DATES: Completed proposals must be received no later than December 31, 2001. Proposals received after that date will not be considered.

ADDRESSES: Completed proposals and other required materials should be submitted to Jay B. Wilson, Executive Director, National Sheep Industry Improvement Center, U.S. Department of Agriculture, PO Box 23483, Washington, DC 20026–3483 if using the US Postal Service or Room 2117, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250 if using other carriers. Telephone (202) 690–0632 or (207) 236–6567.

FOR FURTHER INFORMATION CONTACT: Jay B. Wilson, Executive Director, National Sheep Industry Improvement Center, U.S. Department of Agriculture, PO Box 23483, Washington, DC 20026–3483 if using the US Postal Service or Room 2117, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250 if using other carriers. Telephone (202) 690–0632 or (207) 236–6567.

SUPPLEMENTARY INFORMATION:

General Information

The Board of Directors of the National Sheep Industry Improvement Center (NSIIC) makes this grant program of up to $200,000 available. The NSIIC is authorized under section 375 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 2008j). A fund is established in the Treasury of the United States, without fiscal year limitations, to provide funds for the enhancement and marketing of sheep or goat products in the United States. Grants are authorized by section 375(e)(3)(A) of the Consolidated Farm and Rural Development Act.

Projects that are submitted in the proposals should be completed in a timely fashion as provided in the proposal, but under no circumstances later than September 30, 2003. The primary objective of the Sheep and Goat Industry Grant Program (SGIG) is to fund a number of diverse projects that will benefit the U.S. sheep or goat industries through product or business development, producer information or education, marketing and promotion for sheep or goats or their products, genetic retention or animal health at the regional, national or international level. The program is administered through USDA, NSIIC.

Eligible Applicants

An Eligible entity is an organization that promotes the betterment of the United States sheep or goat industries that is: (A) A public, private, or cooperative organization; (B) an association, including a corporation not operated for profit; (C) a federally recognized Indian Tribe; or (D) a public or quasi-public agency. Eligible entities must have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence. Under the Lobbying Disclosure Act of 1995, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 501 (c)(4)) which engages in lobbying activities, is not eligible to apply.

Use of Funds

Use of funds should directly impact the U.S. sheep or goat industries through product or business development, producer information or education, marketing and promotion for sheep or goats or their products, genetic retention, or animal health programs. Funds may not be used to: (a) Pay costs of preparing the application package; (b) pay costs incurred prior to the effective date of the grant; (c) conduct duplicative research; or (d) fund political activities. Preference will be given to proposals that have over 50 percent of the project costs in matching funds, including in kind contributions, and no proposal will be funded if the proposed overhead costs exceed 25 percent.

Available Funds and Award Limitations

The total amount of funds available for grants in FY 2002 is approximately $200,000. It is anticipated that all funds will be awarded in FY 2002 for projects that will be completed by September 30, 2003. It is expected that there will be proposals submitted that address a variety of needs related to the U.S. sheep and goat industries. Awards will be segregated so that a variety of needs will be addressed by the funded proposals. The actual number of grants funded will depend on the quality of proposals received and the amount of funding requested. A proposal may be partially funded or funded in its entirety. The maximum amount of Federal funds through this grant program awarded for any one proposal will be $50,000.

Selection Criteria

The proposal will initially be reviewed to determine whether the entity submitting the proposal meets the eligibility requirements and whether the proposal application contains the information required. After this initial evaluation, the following criteria will be used to rate and rank proposals received in response to this notice of funding availability. Failure to address any one of the criteria will disqualify the proposal. Equal weight shall be given to each of the criterion listed below and points will be awarded to each criterion on a scale of 5, 4, 3, 2, 1. A score of 5 indicates that the proposal was judged to be highly relevant to the criteria and a score of 1 indicates that the proposal was judged not to sufficiently address the criteria. A proposal with an average score from the NSIIC evaluation panel of less than 2 for any one criterion will disqualify the proposal.

Each proposal criteria area will be evaluated and judged on its own merits using the following criteria:

1. Potential Industry Impact—Describe the proposed project and demonstrate how it will stimulate the U.S. sheep or goat industries. Provide a detailed analysis of the sheep or goat industry issue that is being addressed by the proposal by including the: (A) Product or group that will be impacted by the proposal (B) geographic area affected (C) target audience or end user; (D) and expected results. Is the industry issue and need well-defined? Does the proposed project provide an effective and efficient approach to resolving the identified need?

2. Industry Commitment—Describe the commitment of the producers, processor, end-users or other involved parties in participating in the proposed project. This may include, but is not limited to, individual producers, producer groups, processors, seminar participants, local organizations, local or state governments or trade associations. Is there a commitment from all who are expected to participate and benefit from the proposed project?

3. Business Soundness—Provide a timetable and objectives along with a quantifiable benchmark and expected results. Does the proposal include: (A) A clear objective; (B) well-defined tasks that will accomplish the objectives; (C) realistic benchmarks; (D) a realistic timetable for the completion of the proposed tasks? Has the business strategy been adequately developed?

4. Financial Feasibility—Provide a well-defined budget for the proposal. Are the funding requirements and budget for the project well defined and financially feasible? Are matching funds or other resources that will be used to leverage the requested funds in the proposal identified?

5. Management Ability—Identify the management team needed to complete the proposal objectives and describe their qualifications. Is the management team identified, and are they capable of implementing the proposal?

Selection Process

The Board of Directors of the NSIIC will evaluate proposal applications. Applications will be evaluated competitively and points awarded as specified in the Selection Criteria section of this notice. Grants will be awarded on a competitive basis to eligible entities. A proposal may be partially funded. After assigning points based upon those criteria, applications will be funded in rank order until all available funds have been expended. The Board of Directors reserves the right to award up to five additional points in order to provide a diversity of projects targeting various situations, geographic areas or subject matter distribution of funded projects. Projects that are approved for further processing will be subject to the grant terms that are negotiated between the applicant and the Board of Directors including, but not limited to, the amount to be funded, project goals, timetables, completion date or other terms as deemed necessary.

Proposal Submission

All proposals, except for forms, are to be submitted on standard 8.5″ x 11″ paper with typing on one side of the page only. In addition, margins must be at least 1″, type must be 12 characters per inch (12 pitch or 10 point) or larger, no more than 6 lines per inch, and there should be no page reductions.

Content of a Proposal

A proposal should contain the following:

1. Form SF–424 ''Application for Federal Assistance.''
2. Form SF–424A ''Budget Information-Non Construction Programs.''
3. Form SF–424B ''Assurances-Non Construction Programs.''
4. Table of Contents—For ease of locating information, each proposal must contain a detailed Table of Contents immediately following the required forms. The Table of Contents should include page numbers for each component of the proposal. Page numbering should begin immediately following the Table of Contents.
5. Project Summary: The proposal must contain a project summary of 1 page or less on a separate page. This page must include the title of the project and the names of the primary project contacts and the applicant organization, followed by the summary. The summary should be self-contained and should describe the overall goals and relevance of the project. The summary should also contain a listing of all organizations involved in the project. The Project Summary should immediately follow the Table of Contents.
6. Project Narrative: The narrative portion of the Project Proposal is limited to 10 pages of text and should contain the following:

a. Introduction. A clear statement of the goals and objectives of the project. The problem should be set in context of the present-day situation. Summarize the body of knowledge which substantiates the need for the proposed project.

b. Rationale and Significance. Substantiate the need for the proposed project. Describe the impact of the project on the U.S. sheep or goat industry. Describe the project's specific relationship to the segment of sheep or goat industry issue, product or market being addressed.

c. Objectives and Approach. Discuss the specific objectives to be accomplished under the project. A detailed description of the approach must include: (1) Techniques or procedures used to carry out the proposed activities and for accomplishing the objectives; (2) The results expected.

d. Time Table. Tentative schedule for conducting the major steps of the project.

e. Evaluation. Provide a plan for assessing and evaluating the accomplishments of the stated objectives during the project and describe ways to determine the effectiveness (impact) of the end results upon conclusion of the project. Awardees will be required to submit written project performance reports on a semi-annual basis.

f. Coordination and Management Plan. Describe how the project will be coordinated among various participants and the nature of the collaborations. Describe plans for management of the project to ensure its proper and efficient administration.

What To Submit

An original and 10 copies must be submitted. Each copy must be stapled in the upper left-hand corner. (DO NOT BIND). All copies of the proposal must be submitted in one package.

Other Federal Statutes and Regulations That Apply

Several Federal statutes and regulations apply to proposals considered for review and to grants awarded under this program. These include but are not limited to:

7 CFR part 1.1—USDA implementation of the Freedom of Information Act. of 1964.
7 CFR part 15a—USDA implementation of title VI of the Civil Rights Act of 1964.
7 CFR part 3015—USDA Uniform Federal Assistance Regulations.
7 CFR part 3016—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
7 CFR part 3017—Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for drug-free workplace (grants).
7 CFR part 3018—New Restrictions on Lobbying.
7 CFR part 3019—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.
7 CFR part 3052—Audits of State, Local Governments, and Non-Profit Organizations.

Public Burden in This Notice

Form SF–424, ''Application for Federal Assistance'' This form is used by applicants as a required face sheet for applications for Federal assistance.

Form SF–424A, ''Budget Information-Non Construction Programs'' This form must be completed by applicants to show the project's budget breakdown, both as to expense categories and the division between Federal and non-Federal sources.

Form SF–424B, ''Assurances-Non Construction Programs'' The applicant must complete this form to give the Federal government certain assurances that the applicant has the legal authority to apply for Federal assistance and the financial capability to pay the non-Federal share of project costs. The applicant also gives assurance it will comply with various legal and regulatory requirements as described in the form.

Reporting Requirements

Awardees will be required to submit written project performance reports on a semi-annual basis and a final report at the completion of the project. The project performance report and final report shall include, but need not be limited to: (1) A comparison of timeline, tasks and objectives outlined in the proposal as compared to the actual accomplishments; (2) If report varies from the stated objectives or they were

not met, the reasons why established objectives were not met; (3) Problems, delays, or adverse conditions which will materially affect attainment of planned project objectives; (4) Objectives established for the next reporting period; and (5) Status of compliance with any special conditions on the use of awarded funds.

Dated: October 26, 2001.

Jay B. Wilson,

Executive Director, National Sheep Industry Improvement Center.

[FR Doc. 01–27396 Filed 10–30–01; 8:45 am]

BILLING CODE 135100001–P

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

Sunshine Act; Meeting

AGENCY: Rural Telephone Bank, USDA.

ACTION: Staff briefing for the board of directors.

TIME AND DATE: 2 p.m., Thursday, November 8, 2001.

PLACE: Conference Room 5030, South Building, Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

1. Contract for legal and business advisors to the Privatization Committee.
2. FY 2002 Appropriations.
3. Current telecommunications industry issues.
4. Schedule for Year 2002 board meetings.
5. Administrative issues.

ACTION: Board of directors meeting.

TIME AND DATE: 9 p.m., Friday, November 9, 2001.

PLACE: Conference Room 104–A, Jamie L. Whitten Building, Department of Agriculture, 12th and Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Introduction of Ms. Hilda Gay Legg, newly appointed Governor of the Rural Telephone Bank.
3. Action on Minutes of the August 17, 2001, board meeting.
4. Report on loans approved in FY 2001.
5. Report on financial activity for FY 2001.
6. Privatization Committee report.
7. Establish dates and locations for Year 2002 board meetings.
8. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: October 26, 2001.

Hilda Gay Legg,

Governor, Rural Telephone Bank.

[FR Doc. 01–27479 Filed 10–29–01; 2:17 pm]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. ST–01–01]

Plant Variety Protection Board; Open Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Plant Variety Protection Board.

DATES: November 14 and 15, 2001, 8 a.m. to 5 p.m., open to the public.

ADDRESSES: The meeting will be held in the National 4–H Conference Center, 1700 Connecticut Avenue, Chevy Chase, Maryland.

FOR FURTHER INFORMATION CONTACT: Commissioner Paul M. Zankowski, Plant Variety Protection Office, Science and Technology Program, United States Department of Agriculture, 10301 Baltimore Blvd., Room 400, National Agricultural Library Building, Beltsville, Maryland 20705–2351, Telephone number (301) 504–5518 or fax (301) 504–5291.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App.), this notice is given regarding a Plant Variety Protection Advisory Board meeting. The board is constituted under section 7 of the Plant Variety Protection Act (7 U.S.C. 2327).

The proposed agenda for the meeting will include discussions of: (1) A proposal to increase fees of the Plant Variety Protection Office, (2) the Six Sigma review process, (3) long term strategic planning for efficient functioning of the Plant Variety Protection Office, (4) migration to e-business and (5) and other related topics. Written comments may be submitted to the contact person listed above before or after the meeting.

Dated: October 25, 2001.

A.J. Yates,

Administrator, Agricultural Marketing Service.

AGENDA—Plant Variety Protection (PVP) Board Meeting, November 14 and 15, 2001, National 4–H Conference Center, Chevy Chase, MD

November 14, 2001

Call to Order
Introductions
Opening Remarks
Adoption of Agenda
Adoption of March and September 2000 Board Meeting Minutes
Overview of the PVP Act and proposed changes to the regulations and rules of practice
Discussion of proposed fee increase and supplemental fees
Reengineering PVP Office business operations (Six Sigma Process)
Recommendations

November 15, 2001

FY2001 Accomplishment Report
Appeals to the Secretary of Agriculture (if any)
E-Business Migration Plans
Biotechnology—Influence of new molecular techniques for the reviewing applications and bioengineered varieties
Future Program Activities
Topics brought forward by Board members
Meeting Summary
Adjourn

[FR Doc. 01–27324 Filed 10–30–01; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Georgia Transmission Corporation, Notice of Intent

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of intent to hold scoping meetings and prepare an environmental assessment.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) proposes to prepare environmental assessments related to possible financing assistance to Georgia Transmission Corporation for the construction of approximately 25 miles of 230 kV transmission line and 30 miles of 500 kV transmission line. The 230 kV transmission line project would be located in Heard and Carroll Counties, Georgia. The 500 kV transmission line would be located in Heard, Carroll, and Douglas Counties, Georgia.

DATES: RUS and Georgia Transmission Corporation will conduct a scoping meeting in an open house format from 3 P.M. until 8 P.M. on Thursday, November 15, 2001.

ADDRESSES: The meeting will be held at the Carrollton Parks Recreation and Cultural Arts Center in the Optimist Room located at 118 South White Street, in Carrollton, Georgia 30117, phone (770)–832–1161. The purpose of the meeting is to provide information to the public and solicit comments.

FOR INFORMATION CONTACT: Bob Quigel, Engineering and Environmental Staff, Rural Utilities Service, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone (202) 720–0468. Mr. Quigel's e-mail address is *bquigel@rus.usda.gov.* You can also contact Ms. Analee Mayes at Georgia Transmission Corporation at (770) 270–7030. Ms. Mayes' e-mail address is *pbcntr1@gatrans.com.*

SUPPLEMENTARY INFORMATION: Two separate transmission lines are being proposed. A separate environmental assessment will be prepared for each transmission line. Georgia Transmission Corporation proposes to construct a 230 kV transmission between the Yellowdirt Switching Station at Plant Wansley in Heard County to the proposed Hickory Level Substation in Carroll County. (The Hickory Level Substation is anticipated to be in service by 2002 as it is a needed system improvement regardless of the 230 kV transmission line described herein.) Concrete or steel single pole structures ranging in height from 90 to 130 feet would support the conductors and would require a right-of way of approximately 100 feet. The approximate length of the line is 25 miles. It is anticipated that this transmission line would be in service in the spring of 2004. Georgia Transmission Corporation proposes to construct a 500 kV transmission line from the existing substation at Plant Wansley in Heard County to the existing Villa Rica #2 Substation east of Villa Rica, in Douglas County. Lattice steel structures would be used to support the conductors for the length of the project. The heights of these structures typically range from 80 to 150 feet and require a right-of-way width of 180 feet. The approximate length of the line is 30 miles. It is anticipated that this transmission line would be in service by the spring of 2008.

Alternatives considered by RUS and Georgia Transmission Corporation include: (a) No action, (b) alternative transmission improvements, and (c) alternative transmission line corridors. An Alternative Evaluation Study and Macro Corridor Study Report, prepared by Georgia Transmission Corporation, will be presented at the public scoping meetings. The report is available for public review at RUS at the address provided in this notice, at Georgia Transmission Corporation, 2100 East Exchange Place, Tucker, Georgia 30085 and at:

Whitesburg City Hall, 788 Main Street, Whitesburg, GA 30185, Phone: 770–832–1184

Neva Lomason Memorial Library, 710 Rome Street, Carrollton, GA 30117, Phone: 770–836–6711

Villa Rica City Hall, 571 West Bankead Hwy., Villa Rica, GA 30180, Phone: 770–459–3656

Heard County Public Library, 564 Main Street, Franklin, GA, Phone: 706–675–6501

Villa Rica Public Library, 70 Horace Luther Dr., Villa Rica, GA 30180, Phone: 770–459–7012

Carrollton City Hall, 315 Bradley Street, Carrollton, GA 30117, Phone: 404–830–2000

Mr. Jim Veal, Roopville City Council, P.O. Box 410, Roopville, GA 30170, Phone: 770–854–7723

Government agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposed project. Representatives from RUS and Georgia Transmission Corporation will be available at the scoping meetings to discuss RUS's environmental review process, describe the project, the need for the project, and macro corridors under consideration, and discuss the scope of environmental issues to be considered, answer questions, and accept oral and written comments. Written comments will be accepted for 30 days after the public scoping meeting. Written comments should be sent to RUS at the address provided in this notice.

From information provided in the alternative evaluation and site selection study, input that may be provided by government agencies, private organizations, and the public, Georgia Transmission Corporation will prepare an environmental analysis to be submitted to RUS for review. RUS will use the environmental analysis to determine the significance of the impacts of the project and may adopt it as its environmental assessment of the project. RUS' environmental assessment of the project would be available for review and comment for 30 days.

Should RUS determine, based on the environmental assessment of the project, that the impacts of the construction and operation of the plant would not have a significant environmental impact, it will prepare a finding of no significant impact. Public notification of a finding of no significant impact would be published in the **Federal Register** and in newspapers with a circulation in the project area.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with environmental review requirements as prescribed by CEQ and RUS environmental policies and procedures.

Dated: October 23, 2001.

Glendon D. Deal,

Acting Director, Engineering and Environmental Staff.

[FR Doc. 01–27325 Filed 10–30–01; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

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

October 25, 2001.

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

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

EFFECTIVE DATE: January 1, 2002.

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

SUPPLEMENTARY INFORMATION:

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

The import restraint limits and Guaranteed Access Levels (GALs) for textile products, produced or manufactured in Costa Rica and exported during the period January 1, 2002 through December 31, 2002 are based on limits notified to the Textiles

Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits and guaranteed access levels for 2002.

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

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Information regarding the availability of the 2002 CORRELATION will be published in the **Federal Register** at a later date.

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

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 25, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Costa Rica and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following restraint limits:

Category	Twelve-month limit
340/640	1,541,941 dozen.
342/642	569,217 dozen.
347/348	2,598,514 dozen.
443	230,083 numbers.
447	12,405 dozen.

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

Products in the above categories exported during 2001 shall be charged to the applicable category limits for that year (see directive dated December 13, 2000) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC, and under the terms of the Special Access Program, as set forth in 63 FR 16474 (April 3, 1998), you are directed to establish guaranteed access levels for properly certified cotton, wool and man-made fiber textile products in the following categories which are assembled in Costa Rica from fabric formed and cut in the United States and re-exported to the United States from Costa Rica during the period beginning on January 1, 2002 and extending through December 31, 2002:

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

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

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

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

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

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–27345 Filed 10–30–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

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

October 25, 2001.

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

ACTION: Issuing a directive to the Commissioner of Customs establishing import limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 2002.

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

SUPPLEMENTARY INFORMATION:

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

The import restraint limits and Guaranteed Access Levels (GALS) for textile products, produced or manufactured in Guatemala and exported during the period January 1, 2002 through December 31, 2002 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits and guaranteed access levels for 2002.

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

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Information regarding the availability of the 2002 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in

Federal Register notice 63 FR 16474, published on April 3, 1998.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 25, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Guatemala and exported during the period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	2,013,906 dozen.
347/348	2,411,420 dozen.
351/651	424,822 dozen.
443	76,123 numbers.
448	47,696 dozen.

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

Products in the above categories exported during 2001 shall be charged to the applicable category limits for that year (see directive dated November 28, 2000) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC, and under the terms of the Special Access Program, as set forth in 63 FR 16474 (April 3, 1998), effective on January 1, 2002, you are directed to establish guaranteed access levels for properly certified textile products in the following categories which are assembled in Guatemala from fabric formed and cut in the United States and re-exported to the United States from Guatemala during the period January 1, 2002 through December 31, 2002:

Category	Guaranteed access Level
340/640	520,000 dozen.
347/348	1,000,000 dozen.
351/651	200,000 dozen.
443	25,000 numbers.
448	42,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification in accordance with the provisions of the certification requirements established in the directive of January 24, 1990 (55 FR 3079), as amended, shall be denied entry unless the Government of Guatemala authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

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

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

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

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–27344 Filed 10–30–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Technology Advisory Committee; Security Procedures for November 27, 2001; Meeting

On October 17, 2001, the Commodity Futures Trading Commission published notice that its Technology Advisory Committee will conduct a public meeting on Tuesday, November 27, 2001. The meeting will take place at the Federal Reserve Bank of Chicago, 230 South LaSalle Street, Chicago, IL 60604–1413, from 1 to 5 p.m. For general information concerning this meeting, see 66 FR 52747.

Due to the physical security procedures at the Federal Reserve Bank of Chicago, all attendees must register with the Bank in advance, (but not later than November 25, 2001) by providing their names and company affiliations. To register, please contact Judith Kozla by telephone at (800) 333–0894, extension or by e-mail at *judith.kozla@chi.frb.org.* The secondary contact is Pamela Suarez, who can be reached at (800) 333–0894, extension 8103, or *pamela.suarez@chi.frb.org.* Persons who do not register by November 25, 2001 will not be able to attend the meeting.

On the day of the meeting, attendees must bring photo identification to receive a visitors pass. Be advised that the Federal Reserve Bank of Chicago utilizes metal detectors as well as x-ray machines for all bags and briefcases.

For further information concerning this meeting, please contact Natalie A. Markman or William Penner at (202) 418–5060.

Issued by the Commission in Washington, DC on October 26, 2001.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01–27374 Filed 10–30–01; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Draft Environmental Impact Statement (DEIS) for Enhanced Training and Operations at the National Guard Training Center (NGTC)—Fort Indiantown Gap (FTIG), PA

AGENCY: National Guard Bureau (NGB), Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Pennsylvania Army National Guard (PAARNG) and the Pennsylvania Air National Guard (PaANG) have formulated long-range plans to ensure the continued and long-term viability of FTIG as a National Guard Training Center. In these plans, a total of 11 actions, comprised of 42 component projects, are proposed for the specific purposes and needs set forth in the DEIS. These proposed actions consist of the construction or improvement of the following projects: (1) Tracked Vehicle Training Complex, (2) Ammunition Supply Point Facility, (3) Artillery Training Support Facility, (4) Multi-Purpose Training Range Facility, (5) NGTC–FTIG Garrison Facility, (6) Wastewater Treatment Plant and Collection System, (7) Muir Army Airfield Complex, (8) Air Guard Station Facilities, (9) Air-to-Ground Range Control Compound, (10) Regional Equipment Operator Training School, and (11) the implementation of the Integrated Natural Resources Management Plan. Implementation of these actions and component projects, in concert with on-going operations, will provide the user of NGTC–FTIG with the facilities, training support, logistical support, and resources necessary to complete their military mission.

ADDRESSES: Written comments or materials should be forwarded to Captain Geoffrey Lincoln, NGTC–FTIG EIS Project Officer, NGTC–FTIG, Environmental Section, 1119 Utility Road, Annville, Pennsylvania 17003–5002; or Lieutenant Colonel Christopher Cleaver, NGTC–FTIG Public Affairs

Officer (PAO), PADMVA Headquarters, Building 0–47, Annville, Pennsylvania 17003–5002.

FOR FURTHER INFORMATION CONTACT: Captain Lincoln at (717) 861–2548 or Lieutenant Colonel Cleaver at (717) 861–8468.

SUPPLEMENTARY INFORMATION: The mission of the 28th Infantry Division (Mechanized) is to be trained and equipped to join the active forces in time of war or national emergency; response to orders of the governor protecting lives and property during natural and man-made disasters; cleaning up the environment; fighting to eradicate the illicit flow of drugs; and serving as role models for future generations. Each of the proposed actions has been determined to be necessary to allow the PAARNG and PaANG to continue to utilize the training site to support on-going military and civilian missions. By implementing each of these actions, NGTC–FTIG will continue to provide training and support facilities necessary to ensue its long-term viability, sustainability, and value as a major NGB training site. A summary of impact analysis of previously completed Environmental Assessments are incorporated into the DEIS.

Two public comment meetings are anticipated to be held in the fall of 2001, with exact dates and locations to be determined and published in the local news media well in advance of the meeting. These meetings will be conducted in order to receive comments from the public on the DEIS.

Dated: October 24, 2001.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA (I&E).

[FR Doc. 01–27353 Filed 10–31–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council (FICC), and invites people to participate. Notice of this meeting is required under section 644(c) of the Individuals with Disabilities Education Act (IDEA) and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities.

The FICC will attend to ongoing work including discussion of future planning.

DATES AND TIMES: FICC Meeting: Thursday, December 13, 2001 from 1:30 p.m. to 4:30 p.m.

ADDRESSES: U.S. Department of Education, Barnard Auditorium, 400 Maryland Avenue, SW., Washington, DC 20202 (near the Federal Center Southwest and L'Enfant metro stops).

FOR FURTHER INFORMATION CONTACT: Bobbi Stettner-Eaton or Obral Vance, U.S. Department of Education, 330 C Street, SW., Room 3080, Switzer Building, Washington, DC 20202. Telephone: (202) 205–5507 Ext. 3. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–9754.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is established under section 644(c) of the Individuals with Disabilities Education Act (20 U.S.C. 1484a). The Council is established to: (1) Minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by Dr. Robert H. Pasternack, Assistant Secretary for Special Education and Rehabilitative Services.

The meeting of the FICC is open to the public and is physically accessible. Anyone requiring accommodations such as an interpreter, materials in Braille, large print, or cassette please call Obral Vance at (202) 205–5507 (voice) or (202) 205–9754 (TDD) ten days in advance of the meeting. Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 330 C Street, SW., Room 3080, Switzer Building, Washington, DC 20202, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal Holidays.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 01–27323 Filed 10–30–01; 8:45 am]

BILLING CODE 4000–010–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–146–000, ER02–147–000, ER02–148–000, ER02–149–000]

CalPeak Power—Panoche LLC et. al.; Notice of Filing

October 25, 2001.

Take notice that on October 22, 2001, CalPeak Power—Panoche LLC, CalPeak Power—Vaca Dixon LLC, CalPeak Power—Enterprise LLC, and CalPeak Power—Border LLC (the CalPeak Entities) tendered for filing each of the CalPeak Entities' respective long-term power purchase agreements with the California Department of Water Resources (CDWR).

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest 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). All such motions and protests should be filed on or before November 12, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). 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.

David P. Boergers,

Secretary.

[FR Doc. 01–27333 Filed 10–30–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–325–005]

Colorado Interstate Gas Company; Notice of Compliance Filing

October 25, 2001.

Take notice that on October 22, 2001, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with an effective date October 5, 2001.

CIG states that the filing is being made in compliance with the Commission's order issued October 5, 2001 at Docket No. RP00–325–003, et al.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). 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.

David P. Boergers,

Secretary.

[FR Doc. 01–27336 Filed 10–30–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 184–065 California]

El Dorado Irrigation District; Notice of Public Meeting

October 25, 2001.

The Federal Energy Regulatory Commission (Commission) is reviewing the application for a new license for the El Dorado Project (FERC No.184), which was filed on February 22, 2000. The El Dorado Project, licensed to the El Dorado Irrigation District (EID), is located on the South Fork American River, in El Dorado, Alpine, and Amador Counties, California. The project occupies lands of the Eldorado National Forest.

The EID, several state and federal agencies, and several non-governmental agencies have agreed to ask the Commission for time to work collaboratively with a facilitator to resolve certain issues relevant to this proceeding. The purpose of this meeting is to finalize the protocols by which the collaborative group would operate and, if time permits, begin discussions of the interests of the parties. We invite the participation of all interested governmental agencies, non-governmental organizations, and the general public in this meeting.

The meeting will be held on Tuesday, November 13, 2001, from 9 a.m. until 4 p.m. in the Sacramento Marriott, located at 11211 Point East Drive, Rancho Cordova, California.

For further information, please contact Elizabeth Molloy at (202) 208–0771 or John Mudre at (202) 219–1208.

David P. Boergers,

Secretary.

[FR Doc. 01–27334 Filed 10–30–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–22–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

October 25, 2001.

Take notice that on October 22, 2001, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective December 1, 2001.

Natural states that the purpose of this filing is to eliminate the surcharges for Gas Supply Realignment costs applicable to Natural's services and to delete other references to GSR where no longer applicable.

Natural states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). 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.

David P. Boergers,

Secretary.

[FR Doc. 01–27337 Filed 10–30–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–3112–001]

New York Independent System Operator, Inc.; Notice of Filing

October 25, 2001.

Take notice that on October 22, 2001, the New York Independent System Operator, Inc. (NYISO) filed a correction to revisions to its Market Administration and Control Area Services Tariff (Services Tariff) and its Open-Access Transmission Tariff (''OATT'') to make permanent two temporary market rules pertaining to External Transactions that were initially implemented as ''Extraordinary Corrective Actions,'' and to introduce several new enhancements to its

external transaction scheduling processes.

The NYISO has requested a waiver of the usual sixty day notice period so that this filing can become effective on October 30, 2001.

The NYISO has served a copy of the filing on all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, to the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest 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). All such motions and protests should be filed on or before November 1, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). 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.

David P. Boergers,

Secretary.

[FR Doc. 01–27332 Filed 10–30–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–8–000, et al.]

Metro Energy, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

October 24, 2001.

Take notice that the following filings have been made with the Commission:

1. Metro Energy, L.L.C.

[Docket No. EC02–8–000]

Take notice that on October 19, 2001, Metro Energy, L.L.C. (Metro Energy), filed with the Federal Energy Regulatory Commission (Commission), an application pursuant to section 203 of the Federal Power Act (16 U.S.C. 842b) and part 33 of the Commission's Regulations for authorization of the transfer to the Charter County of Wayne, Michigan (County) of certain interconnection facilities which may be regarded as jurisdictional facilities and which are appurtenant to the 17.1 MW natural-gas fueled generating facility that Metro Energy is transferring to the County.

Comment date: November 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. American Transmission Company LLC

[Docket No. EC02–9–000]

Take notice that on October 18, 2001, American Transmission Company LLC (ATCLLC), tendered for filing with the Federal Energy Regulatory Commission (Commission), an Application for Authorization to Transfer Operational Control of Jurisdictional Transmission Facilities to the Midwest Independent Transmission System Operator, Inc. pursuant to section 203 of the Federal Power Act and part 33 of the Commission's regulations, 18 CFR 33.1.

Comment date: November 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, Tucson Electric Power Company, WestConnect RTO, LLC

[Docket No. EL02–9–000]

Take notice that on October 16, 2001, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, and Tucson Electric Power Company filed pursuant to Rule 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.207, and the Commission's Regional Transmission Organization (RTO) rules at 18 CFR 35.34(d)(3) and (4), a petition for Declaratory Order seeking confirmation that their joint proposal to form WestConnect RTO, LLC (WestConnect) meets or exceeds the Commission's requirements for the formation of RTOs under Order No. 2000.

Comment date: November 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Consumers Energy Company

[Docket Nos. ER92–331–009 and ER92–332–009]

Take notice that on October 22, 2001, Consumers Energy Company (Consumers) tendered for filing with the Federal Energy Regulatory Commission (Commission) the following substitute tariff sheets as part of its FERC Electric Tariff No. 5 in compliance with the October 5, 2001 letter order, and previous orders, issued in these proceedings; Second Sub Original Sheet Nos. 2.00, 10.00, 11.00 and 12.00.

The first sheet listed is to have an effective date of June 21, 1993. The remaining three sheets are to have an effective date of May 2, 1992. Copies of these sheets were served upon the Michigan Public Service Commission and upon those on the official service lists in these proceeding.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp

[Docket No. ER01–1152–003]

Take notice that PacifiCorp on October 22, 2001, tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its January 30, 2001 filing of a revised Exhibit C to the contract for Interconnections and Transmission Service between PacifiCorp and Western Area Power Administration (Western), Contract No. 14–06–400–2436, Supplement No. 2 (PacifiCorp's Rate Schedule FERC No. 262). The revisions modify the rates charged to Western for Block 2 transmission service. Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

PacifiCorp has requested an effective date of April 1, 2001.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Mountain View Power Partners II, LLC

[Docket No. ER01–1336–001]

Take notice that on October 22, 2001, Mountain View Power Partners II, LLC (Mountain View II) filed with the Federal Energy Regulatory Commission (Commission) a Notice of Change in Status with the Commission in accordance with the delegated letter order issued April 6, 2001 in Mountain View Power Partners II, LLC, Docket No. ER01–1336–000, accepting for filing Mountain View II's marked-based rate tariff. The Notice of Change in Status reports that the change in ownership of Mountain View II that was described in its market-based rate application filed with the Commission on February 27, 2001 in the above-referenced docket, has occurred.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of New Mexico

[Docket No. ER01–2566–002]

Take notice that on October 22, 2001, Public Service Company of New Mexico (PNM) submitted for filing with the Federal Energy Regulatory Commission (Commission) a supplement to its filing in this proceeding to respond to a letter dated September 21, 2001, from the Director, Division of Tariffs and Rates + West, notifying PNM that its original filing was deficient. This supplement provides additional information concerning the Wholesale Requirements Power Sale and Services Agreement (Agreement) between PNM and Texas-New Mexico Power Company (TNMP) filed by PNM in this proceeding. Specifically, the supplement provides additional information concerning transmission service associated with sales to TNMP pursuant to the Agreement, as well as additional information concerning charges for ancillary services. The supplement includes an amended version of the Agreement, designated as Substitute Service Agreement No. 28 under PNM's FERC Electric Tariff, First Revised Volume No. 3.

Copies of this filing have been served upon TNMP, Southwestern Public Service Company, and the New Mexico Public Regulation Commission.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. ODEC Power Trading, Inc.

[Docket No. ER01–2783–001]

Take notice that on October 22, 2001, ODEC Power Trading, Inc. (OPT) filed with the Federal Energy Regulatory Commission (Commission) an Amendment to its application for blanket authority to sell wholesale power at market-based rates (Docket No. ER01–2783–000). OPT's Amendment is filed pursuant to section 205 of the Federal Power Act and Rules 205 and 207 of Commission's Rules of Practice and Procedure, 18 CFR 385.205 and 385.207.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. PacifiCorp

[Docket No. ER01–3071–001]

Take notice that on October 22, 2001, PacifiCorp, tendered for filing with the Federal Energy Regulatory Commission (Commission) in accordance with 18 CFR Section 35 of the Commission's Rules and Regulations, an Amendatory Agreement No. 1 to Service Agreement No. 50 under PacifiCorp's FERC Electric Tariff, Volume No. 12 dated October 12, 2001 between Flathead and PacifiCorp.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. PPL Electric Utilities Corporation

[Docket No. ER02–128–001]

Take notice that on October 23, 2001, PPL Electric Utilities Corporation (PPL Electric) and Williams Generation Company—Hazleton (WGC) filed with the Federal Energy Regulatory Commission (Commission) Exhibit C to an Interconnection Agreement between PPL Electric and WGC. The Interconnection Agreement originally filed with the Commission on October 18, 2001 inadvertently omitted the contents of Exhibit C.

PPL Electric and WGC request an effective date of October 19, 2001 for the Interconnection Agreement.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. PJM Interconnection, L.L.C.

[Docket No. ER02–131–000]

Take notice that on October 19, 2001, PJM Interconnection, L.L.C. (PJM), submitted for filing with the Federal Energy Regulatory Commission (Commission) amendments to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. and PJM's FERC Electric Tariff, Third Revised Volume No. 1 to permit Market Sellers the option of requesting cost-based start-up fees in their Offer Data that are modifiable on a daily basis.

Copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM control area.

Comment date: November 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. American Transmission Systems, Incorporated

[Docket No. ER02–132–000]

Take notice that on October 19, 2001, American Transmission Systems, Incorporated (ATSI) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Generator Interconnection and Operating Agreement to provide a connection of electric generating facilities owned and operated by Fremont Energy Center, L.L.C. (Fremont) to the FirstEnergy Transmission System and for coordination of the operation and maintenance of those facilities with ATSI. The proposed effective date for the Generator Interconnection and Operating Agreement is September 19, 2001.

Copies of this filing have been served on the Ohio and Pennsylvania utility commissions and Fremont.

Comment date: November 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Wisconsin Public Service Corporation

[Docket No. ER02–133–000]

Take notice that on October 19, 2001, Wisconsin Public Service Corporation (WPSC) tendered for filing with the Federal Energy Regulatory Commission (Commission) a revised partial requirements service agreement with Washington Island (WIEC). Second Revised Service Agreement No. 9 provides WIEC's contract demand nominations for January 2002—December 2002, under WPSC's W–2A partial requirements tariff.

The company states that copies of this filing have been served upon WIEC and to the State Commissions where WPSC serves at retail.

Comment date: November 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Consumers Energy Company

[Docket No. ER02–134–000]

Take notice that on October 18, 2001 Consumers Energy Company (Consumers) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement with Carolina Power & Light Company, (Customer) under Consumer's FERC Electric Tariff No. 9 for Market Based Sales. Consumers requested that the Agreement be allowed to become effective as of September 27, 2001.

Copies of the filing were served upon the Customer and the Michigan Public Service Commission.

Comment date: November 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Mid-Continent Area Power Pool

[Docket No. ER02–135–000]

Take notice that on October 19, 2001, the Mid-Continent Area Power Pool (MAPP), on behalf of its members that are subject to Commission jurisdiction as public utilities under section 201(e) of the Federal Power Act, filed with the Federal Energy Regulatory Commission

(Commission) an amendment to Schedule R of the Restated Agreement that would extend provision of the redispatch service from October 31, 2001 to October 31, 2002.

Comment date: November 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. West Penn Power Company

[Docket No. ER02–136–000]

Take notice that on October 19, 2001 West Penn Power Company filed with the Federal Energy Regulatory Commission (Commission) a unilateral addendum to its agreement for service to Allegheny Electric Cooperative, Inc. West Penn recites that the addendum contains terms and conditions proposed by West Penn for a one-year renewal period of that agreement.

Comment date: November 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Mohawk River Funding III, L.L.C.

[Docket No. ER02–137–000]

Take notice that on October 19, 2001, Mohawk River Funding III, L.L.C. (Mohawk), filed with the Federal Energy Regulatory Commission (Commission) an application asking that the Commission accept for filing an Amended and Restated PPA (designated as Mohawk River Funding III, L.C. Rate Schedule FERC No. 1), thereby authorizing Mohawk to engage in the wholesale sales of energy and capacity under the Amended and Restated PPA at the market-based rates to which the parties have agreed, and grant other waivers, approvals, and authorizations requested in the application.

Mohawk is a limited liability company formed under the laws of Delaware. Mohawk does not own any generating facilities.

Comment date: November 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Northern Indiana Public Service Company

[Docket No. ER02–138–000]

Please take notice that on October 22, 2001, Northern Indiana Public Service Company (NIPSCO), a wholly owned subsidiary of NiSource Inc., tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement. NIPSCO seeks an effective date of December 21, 2001, for the tariff sheets submitted with this filing.

NIPSCO states that pursuant to the Service Agreement, it will be authorized to sell electric energy, from time to time, to its marketing affiliate, EnergyUSA-TPC Corp. (TPC). The rate applicable to any such sales will be no lower than the published ''Into-Cinergy'' price for the applicable time period. The ''Into-Cinergy'' rate will act as a guarantee against potential affiliate concerns. Under the terms of the proposed Service Agreement, neither TPC nor NIPSCO shall be required to undertake any sales or purchases of electric energy.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Florida Power & Light Company

[Docket No. ER02–139–000]

Take notice that on October 22, 2001, Florida Power & Light Company (FPL) filed with the Federal Energy Regulatory Commission (Commission), pursuant to Section 205 of the Federal Power Act, an executed Interconnection & Operation Agreement between FPL and CPV Atlantic, Ltd.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. Wisconsin Public Service Corporation

[Docket No. ER02–140–000]

Take notice that on October 22, 2001, Wisconsin Public Service Corporation (WPSC) tendered for filing with the Federal Energy Regulatory Commission (Commission) a revised partial requirements service agreement with Manitowoc Public Utilities (MPU). Second Revised Service Agreement No. 5 provides MPU's contract demand nominations for January 2002–December 2002, under WPSC's W–2A partial requirements tariff.

The company states that copies of this filing have been served upon MPU and to the State Commissions where WPSC serves at retail.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. Michigan Electric Transmission Company

[Docket No. ER02–142–000]

Take notice that on October 22, 2001, Michigan Electric Transmission Company (Michigan Transco) tendered for filing with the Federal Energy Regulatory Commission (Commission) executed Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service with Dynegy Power Marketing (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on February 22, 2001 by Michigan Transco and International Transmission Company (ITC). Copies of the filed agreements were served upon the Michigan Public Service Commission, ITC, and the Customer.

Michigan Transco is requesting an effective date of October 15, 2001 for the Agreements.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. American Electric Power Service Corporation

[Docket No. ER02–141–000]

Take notice that on October 22, 2001, the American Electric Power Service Corporation (AEPSC) tendered for filing with the Federal Energy Regulatory Commission (Commission) ten replacement blanket Service Agreements for existing customers under the AEP Companies' Power Sales Tariffs; AEPSC's request to terminate several Service Agreements under the Power Sales Tariffs and; various Counterparty requests to assign their Service Agreement under AEPSC's Power Sales Tariffs to other entities because of a merger or acquisition. The Power Sales Tariffs were accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5 (Wholesale Tariff of the AEP Operating Companies) and FERC Electric Tariff Original Volume No. 8, Effective January 8, 1998 in Docket ER 98–542–000 (Market-Based Rate Power Sales Tariff of the CSW Operating Companies). AEPSC respectfully requests waiver of notice to permit the attached Service Agreements to be made effective on or prior to September 20, 2001. AEPSC also respectively requests that the Commission accepts its request to terminate those Service Agreements identified in Exhibit 2 and the assignments identified in Exhibit 3 to be effective on, or prior to September 20, 2001.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. Commonwealth Edison Company

[Docket No. ER02–143–000]

Take notice that on October 22, 2001, Commonwealth Edison Company (ComEd) submitted for filing with the Federal Energy Regulatory Commission (Commission) an amended Form of Service Agreement for Firm Point-To-Point Transmission Service (Amended

Service Agreement) between ComEd and Exelon Generation Company, LLC (Exelon) under the terms of ComEd's Open Access Transmission Tariff (OATT). ComEd asks that the Amended Service Agreement supersede and be substituted for the Service Agreement with Exelon previously filed on August 21, 2001 in Docket No. ER01–2897–000. The Amended Service Agreement has been amended to change the roll-over rights from pending to granted. Copies of this filing were served on Exelon.

ComEd requests an effective date of October 5, 2001 for the Amended Service Agreement, and waiver of the Commission's notice requirements.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

24. Entergy Services, Inc.

[Docket No. ER02–144–000]

Take notice that on October 22, 2001, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing with the Federal Energy Regulatory Commission (Commission) a unilaterally executed Interconnection and Operating Agreement with Mobil Oil Corporation (Mobil), and a Generator Imbalance Agreement with Mobil.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

25. New England Power Pool

[Docket No. ER02–145–000]

Take notice that on October 22, 2001, the New England Power Pool (NEPOOL) submitted to the Federal Energy Regulatory Commission (Commission) the Seventy-Seventh Agreement Amending the Restated NEPOOL Agreement (the Seventy-Seventh Agreement), which corrects and updates certain provisions of the NEPOOL Tariff to reflect recently completed merger activity among various NEPOOL Participants, and corrects certain other incorrect references in various defined terms in the NEPOOL Tariff. NEPOOL also filed on October 22, 2001 certain changes to the NEPOOL Tariff Attachment F Implementation Rule, which correct incorrect references in various defined terms of the Implementation Rule and are not substantive. NEPOOL states that these changes will not increase rates.

NEPOOL request a January 1, 2002 effective date.

Comment date: November 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest 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). All such motions or protests should be filed on or before the comment date. 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. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). 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.

David P. Boergers,

Secretary.

[FR Doc. 01–27330 Filed 10–30–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI02–1–000]

Notice of Declaration of Intention and Soliciting Comments, Motions To Intervene, and Protests

October 25, 2001.

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

a. *Application Type:* Declaration of Intention.

b. *Docket No.:* DI02–1–000.

c. *Date Filed:* October 11, 2001.

d. *Applicant:* Peter Fox Sipp, Jr.

e. *Name of Project:* Peter Fox Sipp's Hydro-Generating Facility.

f. *Location:* The Peter Fox Sipp Hydro-Generating Facility would be located approximately 15 miles from Burnsville, North Carolina, on the Cane River in Yancy County, North Carolina. The project will not occupy Federal or Tribal land.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Peter Fox Sipp, 8 Bear Creek Place, Asheville, NC 28806, telephone (828) 258–8139.

i. *FERC Contact:* Any questions on this notice should be addressed to Patricia W. Gillis (202) 208–0735, or E-mail address: *patricia.gillis@ferc.fed.us.*

j. *Deadline for filing comments and/or motions:* December 7, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Copies of this filing are on file with the Commission and are available for public inspection. 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.

Please include the docket number (DI02–1–000) on any comments or motions filed.

k. *Description of Project:* The proposed Peter Sipp's Hydro-Generating Facility would consist of: (1) A jib crane; (2) a paddle type wheel 12 feet wide, 14 feet in diameter; (3) a drawbridge with a screen on the upstream side only in front of the wheel; (4) a 12-volt automotive alternator and producing approximately 420 watts connected to a 24-volt D.C. x 25 amp truck generator producing approximately 600 watts; and (5) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at

http://www.ferc.gov using the ''RIMS'' link, select ''Docket'' and follow the instructions (call 202–208–2222 for assistance).

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–27331 Filed 10–30–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

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

October 25, 2001.

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

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

b. *Project No.:* 233–081.

c. *Date Filed:* October 19, 2001.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Pit 3, 4, and 5 Hydroelectric Project.

f. *Location:* On the Pit River, in Shasta County, near the community of Burney and the Intermountain towns of Fall River Mills and McArthur, California. The project includes 746 acres of lands of the United States, which are administered by the Forest Supervisor of the Shasta Trinity National Forest and the Forest Supervisor of the Lassen National Forest.

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

h. *Applicant Contact:* Mr. Randal Livingston, Lead Director, Hydro Generation Department, Pacific Gas and Electric Company, P.O. Box 770000, N11C, San Francisco, CA 94177, (415) 973–6950.

i. *FERC Contact:* John Mudre, (202) 219–1208 or *john.mudre@ferc.fed.us.*

j. *Deadline for filing additional study requests:* December 18, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Additional study requests may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

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.

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

l. The existing Pit 3, 4, 5 Project consists of three hydraulically-connected developments, with a total of four dams, four reservoirs, three powerhouses, associated tunnels, surge chambers, and penstocks. The powerhouses contain nine generating units with a combined operating capacity of about 325 MW. No new construction is proposed.

The Pit 3 development consists of: (1) The 1,293-acre Lake Britton, with a gross storage capacity of 41,877 acre feet; (2) the Pit 3 Dam, with a crest length of 494 feet and a maximum height of 130 feet; (3) a concrete tunnel in two sections, 19 feet in diameter with a total length of about 21,000 feet; (4) a surge tank; (5) three penstocks about 10 feet in diameter and 600 feet in length; (6) a 47-foot by 194-foot reinforced concrete multilevel powerhouse; (7) three generating units, driven by three vertical Francis turbines, with a combined normal operating capacity of 70 MW; and (8) appurtenant facilities.

The Pit 4 development consists of: (1) The 105-acre Pit 4 Reservoir, with a gross storage capacity of 1,970 acre feet; (2) the Pit 4 Dam, consisting of a gravity type overflow section 203 feet in length with a maximum height of 108 feet and a slab-and-buttress type section 212 feet in length with a maximum height of 78 feet; (3) a 19-foot-diameter pressure tunnel with a total length of about 21,500 feet; (4) two 12-foot-diameter penstocks about 800 feet in length; (5) a four-level 58-foot by 155-foot reinforced concrete powerhouse; (6) two generating units, driven by two vertical Francis turbines, with a combined normal operating capacity of 95 MW; and (7) appurtenant facilities.

The Pit 5 development consists of: (1) The 32-acre Pit 5 Reservoir, with a gross storage capacity of 314 acre feet; (2) the Pit 5 Dam, with a concrete gravity overflow structure 340 feet in length and a maximum height of 67 feet; (3) the 19-foot-diameter Tunnel No. 1; (4) the 48-acre Pit 5 Tunnel Reservoir, with a gross storage capacity of 1,044 acre feet; (5) the Pit 5 Tunnel Reservoir Dam, approximately 3,100 feet long and 66 feet high; (6) the 19-foot-diameter Pit 5 Tunnel No. 2; (7) four steel penstocks about 8 feet in diameter and 1,400 feet in length; (8) a 56-foot by 266.5-foot reinforced concrete multilevel powerhouse; (9) four generating units, driven by four vertical Francis turbines, with a combined normal operating capacity of 160 MW; and (10) appurtenant facilities.

m. A copy of the application is on file with the Commission and is available

for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link—select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the *CALIFORNIA STATE HISTORIC PRESERVATION OFFICER (SHPO)*, as required by section 106 of the National Historic Preservation Act.

o. *Procedural schedule and final amendments:* The application will be processed according to the following milestones, some of which may be combined to expedite processing:

Notice of application has been accepted for filing;
Notice of NEPA Scoping (unless scoping has already occurred);
Notice of application is ready for environmental analysis;
Notice of the availability of the draft NEPA document;
Notice of the availability of the final NEPA document;
Order issuing the Commission's decision on the application.

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.

David P. Boergers,

Secretary.

[FR Doc. 01–27335 Filed 10–30–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7096–2]

Federal NO_X Budget Trading Program; Applicability Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of applicability determination under Federal NO_X Budget Trading Program.

SUMMARY: EPA established 40 CFR part 97, the Federal NO_X Budget Trading Program (''the Program''), to reduce interstate transport of ozone under section 126 of the Clean Air Act (''section 126''). The Program applies to existing or new large electric generating units (''EGU's'') and large non-EGU's (as defined at 40 CFR 52.34) in states subject to section 126. EPA finds, in an applicability determination dated October 24, 2001, that Point B015 at Marathon Ashland Petroleum LLC's Plant 1576000301 in Ohio is not subject to the Program because it is not an EGU, since it does not serve a generator, nor is it a non-EGU, since it has less than 250 (166) mmBtu/hr maximum design heat input. Further, it is not a '' NO_X Budget unit'' as defined at 40 CFR 97.2. Since Point B015 is not subject to the Program, NO_X allowances will not be allocated for this unit in EPA's NO_X Allowance Tracking System.

DATES: Any comments regarding this applicability determination must be submitted in writing to EPA at the address below no later than November 30, 2001.

ADDRESSES: U.S. EPA, Clean Air Markets Division (6204N), Attn: Robert Miller, 1200 Pennsylvania Avenue, NW., Washington DC, 20460.

FOR FURTHER INFORMATION CONTACT: Robert Miller, U.S. EPA Headquarters, Clean Air Markets Division, (202) 564–9077.

Dated: October 24, 2001.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 01–27382 Filed 10–30–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34240; FRL–6810–7]

Technical Briefing on Dietary and Residential Exposure Methodologies for Use in the Organophosphate Pesticide Cumulative Preliminary Risk Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: EPA is announcing a public technical briefing on November 15, 2001, to discuss the exposure methodologies proposed for use in the organophosphate (OP) cumulative risk assessment for food and residential exposures. The briefing will provide the public with an explanation in non-technical terms of the proposed exposure methodologies. In addition, the briefing will cover how the Calendex model calculates and combines these exposure estimates. This briefing follows the August 22, 2001, briefing on the hazard portion of the assessment and the October 3, 2001, briefing on the water exposure methodology. This technical briefing will complete the background briefings on the proposed OP cumulative risk assessment methodology.

DATES: The technical briefing will be held on Thursday, November 15, 2001, from 9 a.m. to 5 p.m. On Friday, November 16, 2001, from 9 a.m. to noon, EPA and the U.S. Department of Agriculture will hold a public meeting of the CARAT Workgroup on Cumulative Risk Assessment/Public Participation Process.

ADDRESSES: The technical briefing will be held at the Old Town Holiday Inn Select, 480 King Street, Alexandria, VA. The telephone number for the hotel is (703) 549–6080. Complimentary shuttle service to and from the Ronald Reagon Airport and the King Street Metro Station is available. The CARAT Workgroup Meeting will be held at the Environmental Protection Agency, 1921 Jefferson Davis Highway, Room 1110 (Fishbowl), Arlington, VA.

FOR FURTHER INFORMATION CONTACT: For general information contact: Terria Northern, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7093; fax number (703) 308–8005, e-mail address: northern.terria@epa.gov.

For technical questions contact: Kathy Monk, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8071; fax number (703) 308–8005, e-mail address: monk.kathy@epa.gov.

Deanna Scher, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–7043; fax number (703) 308–7042, e-mail address: Scher.Deanna@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are concerned about implementation of the Food Quality Protection Act (FQPA). Passed in 1996, this new law strengthens the nation's system for regulating pesticides on food. Participants may include environmental/public interest and consumer groups; industry and trade associations; pesticide user and grower groups; Federal, State and local governments; food processors; academia; general public; etc. Since others may also be interested, the Agency has not attempted to describe all

the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about the cumulative process you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/cumulative.

2. *In person*. The Agency has established an official record under docket control number OPP–34240. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Request to Participate in this Meeting?

This meeting is open to the public. Outside statements by observers are welcome. Oral statements will be limited to 3 to 5 minutes, and it is preferred that only one person per organization present the statement. Any person who wishes to file a written statement may do so immediately before or after the meeting. These statements will become part of the permanent record and will be available for public inspection at the address listed in Unit II.

List of Subjects

Environmental protection, organophosphate pesticides.

Dated: October 25, 2001.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 01–27384 Filed 10–30–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7096–7]

RIN 2040–AB75

Meeting of the Research Working Group of the National Drinking Water Advisory Council; Notice of Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Under section 10(a)(2) of Public Law 92–423, ''The Federal Advisory Committee Act,'' notice is hereby given that a meeting of the Drinking Water Research Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300F *et seq.*), will be held on November 28–29, 2001. The meeting will begin at 9 a.m. on the 28th and end by 4 p.m. on the 29th, at RESOLVE, 1255 23rd Street, NW., Suite 275, Washington, DC 20037. The meeting will be open to the public to observe and statements will be taken from the public as time allows. Seating is limited.

This is the third meeting of the Drinking Water Research Working Group. The purpose of this working group is to provide advice to NDWAC as it develops recommendations for EPA on a Comprehensive Drinking Water Research Strategy (as required under the Safe Drinking Water Act) that will consider a broad range of research needs to support the Agency's drinking water regulatory activities. The research strategy will include an assessment of research needs for microbes and disinfection by-products (M/DBPs), arsenic, contaminants on the Contaminants Candidate List (CCL), and other critical cross-cutting issues, such as sensitive subpopulations, distribution systems, contaminants mixtures, future scenarios and source water assessment. The majority of this meeting (1.5 days) will be a workshop on futures scenarios. During the first half of November 28th, the working group will also discuss the status of the cross-cutting issues and criteria for prioritizing research.

FOR FURTHER INFORMATION CONTACT: For more information, please contact Maggie Javdan, U.S. EPA, Office of Ground Water and Drinking Water, Mailcode 4607, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Phone number: (202)–260–9862. E-mail: *javdan.maggie@epa.gov.*

Dated: October 23, 2001.

Evelyn Washington,

Deputy Office Director, Office of Ground Water and Drinking Water.

[FR Doc. 01–27381 Filed 10–30–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30516; FRL–6803–4]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket control number OPP–30516, must be received on or before November 30, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30516 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7740; and e-mail address: giles-parker.cynthia@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:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

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 Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register** Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–30516. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30516 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30516. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as 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 version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified 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. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control 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. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. *File symbol: 7969-RIU.* Applicant: BASF Corporation, Agricultural Products Division, P.O. Box 13528, Research Triangle Park, NC 27709–3528. Product name: Insignia Fungicide. Active ingredient: pyraclostrobin (methyl-N-(((1-(4-chlorophenyl)pyrazol-3-yl)oxy)o-tolyl)N-methoxycarbamate). Proposed classification: None. Proposed use pattern: Control of anthracnose, brown patch, cool weather patch/yellow patch, fusarium patch, gray leaf spot,

gray snow mold/typhula blight, leaf spot, pink snow mold, pythium blight, red thread, rhizoctonia large patch, rust, spring dead spot, summer patch, and take-all patch on turf grass sites including golf courses; institutional, commercial, and residential lawns; sod farms; parks; recreation areas; cemeteries; and sports fields.

2. *File symbol: 7969-RIL.* Applicant: BASF Corporation, Agricultural Products Division, P.O. Box 13528, Research Triangle Park, NC 27709–3528. Product name: BAS 500F Manufacturers Use Product. Active ingredient: Pyraclostrobin (methyl-N-(((1-(4-chlorophenyl)pyrazol-3-yl)oxy)o-tolyl)N-methoxycarbamate). Proposed classification: None. Proposed use pattern: A technical product for use in fungicide formulations for control of a wide range of fungi on turf grass and a wide range of crops, as here in detailed for the three end-use products containing this active ingredient.

3. *File symbol: 7969-RIA.* Applicant: BASF Corporation, Agricultural Products Division, P.O. 13528, Research Triangle Park, NC 27709 –3528. Product name: Headline EC Fungicide. Active ingredient: pyraclostrobin (methyl-N-(((1-(4-chlorophenyl)pyrazol-3-yl)oxy)o-tolyl)N-methoxycarbamate). Proposed classification: None. Proposed use pattern: Control of alternaria brown spot, anthracnose, black spot, greasy spot, melanose, phytophthora brown spot, post bloom fruit drop, and scab on the citrus crop group; control of anthracnose, ascochyta blight, mycosphaerella blight, powdery mildew, and rust on the dried shelled pea and bean subgroup; control of powdery mildew and rust on grasses grown for seed; control of early leafspot, late leafspot, pepperspot, rhizoctonia limb rot, rhizoctonia peg rot, rhizoctonia pod rot, rust, stem rot, southern blight, web blotch, and white mold on peanuts; control of downy mildew, early blight, late blight, leaf spot, powdery mildew, and rust on the tuberous and corm vegetables subgroup; control of cercospora leaf spot and powdery mildew on sugarbeets; and control of fusarium head scab/blight, net blotch, powdery mildew, rust, scald, septoria, spot blotch, and tan spot on wheat, barley, and rye.

4. *File symbol: 7969-RIT.* Applicant: BASF Corporation, Agricultural Products Division, P.O. Box 13528, Research Triangle Park, NC 27709–3528. Product name: Cabrio Fungicide. Active ingredient: Pyraclostrobin (methyl-N-(((1-(4-chlorophenyl)pyrazol-3-yl)oxy)o-tolyl)N-methoxycarbamate). Proposed classification: None. Proposed use pattern: Control of alternaria, anthracnose, leaf blotch, leaf spot, phomopsis, powdery mildew, rust, and spur blight on the berries group; control of alternaria purple blotch, downy mildew, and powdery mildew on the bulb vegetables group; control of alternaria blight, anthracnose, cercospora leaf spot, downy mildew, gummy stem blight, microdochium blight, powdery mildew, and target leaf spot on the cucurbit vegetables group; control of anthracnose, early blight, late blight, powdery mildew, and septoria leaf spot on the fruiting vegetables group; control of angular leaf spot, anthracnose, black rot, downy mildew, mycosphaerella leaf blight, phomopsis rot, powdery mildew, and ripe rot, and suppression of botrytis gray mold on grape (vinifera variety only); control of late blight and shoot blight on pistachio; control of alternaria, cercospora, powdery mildew, and white rust on the root vegetables group; control of alternaria, anthracnose, leaf rust, and shothole, and suppression of blossom blight on the tree nuts group; control of alternaria, anthracnose, leaf spot, powdery mildew, scab, and shothole, and suppression of monilinia blossom blight on the stone fruits group; control of anthracnose, leaf spot, and powdery mildew, and suppression of botrytis gray mold on strawberry.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 15, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 01–27292 Filed 10–30–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50890; FRL–6804–8]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits (EUPs) to the following pesticide applicants. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

In person or by telephone: Contact the designated person at the following address at the office location, telephone number, or e-mail address cited in each EUP: 1921 Jefferson Davis Hwy., Arlington, VA.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the designated contact person listed for the individual EUP.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

You may obtain electronic copies of this document from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. EUPs

EPA has issued the following EUPs:

053263–EUP–1. Issuance. Cognis Corporation, 4900 Este Avenue, Cincinnati, OH 45232–1419. This EUP allows the use of 1,700 pounds of the insecticide poly(oxy–1,2,–ethanediyl), alpha-isoctadecyl-omega-hydroxy on 67 acres of mosquitoes and midge habitats to evaluate the control of immature midges and mosquitoes. The program is authorized only in the States of California, Florida, and South Carolina. The EUP is effective from October 1, 2001 to October 2, 2002. (Dani Daniel; Rm. 211, Crystal Mall #2; telephone number: (703) 305–5409; e-mail address: daniel.dani@epa.gov).

62719–EUP–46. Extension. Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, Indiana 46268–1054. This EUP allows the use of 237,350 pounds of the nematicide 1,3–dichloropropene on 5,000 acres of golf course turf to evaluate the control of plant parasitic nematodes. The program is authorized only in the State of Florida. The EUP is effective from August 28, 2001 to August 28, 2002. (Mary L. Waller; Rm. 249, Crystal Mall

#2; telephone number: (703) 308–9354; e-mail address: waller.mary@epa.gov).

Persons wishing to review these EUPs are referred to the designated contact person. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: October 13, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 01–27290 Filed 10–30–01; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

October 25, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (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 estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 31, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advice the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–0992.

Title: Request for Extension of the Implementation Deadline for Non-Recurring Services, CC Docket 96–45 (FCC 01–195) and 47 CFR Section 54.507(d)(1)(4).

Form No.: N/A.

Type of Review: Extension.

Respondents: Business or Other for Profit; Not-for-Profit Institutions.

Number of Respondents: 850.

Estimated Time Per Response: 1 hour per response (avg).

Total Annual Burden: 850 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Third Party Disclosure.

Needs and Uses: Section 54.507(d) provides additional time for recipients under the schools and libraries universal service support mechanism to implement contracts or agreements with service providers for non-recurring services. Section 54.507(d) extends the deadline for receipt of non-recurring services from June 30 to September 30 following the close of the funding year. Section 54.407(d) establishes a deadline for the implementation of non-recurring services for certain qualified applicants who are unable to complete implementation by the September 30 deadline. Applicants may qualify for the extension, based on satisfaction of one of four criteria. Applicants may be required to submit documentation or a certification.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 01–27349 Filed 10–30–01; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

* * * * *

Previously announced date & time: Thursday, November 1, 2001, open meeting scheduled for 10:00 a.m. The starting time has been changed to 2:00 p.m.

DATES & TIME: Tuesday, November 6, 2001 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATES & TIME: Thursday, November 8, 2001 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2001–13: Green Party of the United States by special counsel, Thomas Alan Linzey, and senior counsel, David Cobb.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer. Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 01–27486 Filed 10–29–01; 3:12 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011692–001.

Title: SCI/Contship and CMA CGM Space Charter and Sailing Agreement.

Parties: CMA CGM S.A., Contship Containerlines, The Shipping Corporation of India, Ltd.

Synopsis: The proposed modification adds language establishing a conference arrangement in that portion of the agreement scope westbound from India, Pakistan, Sri Lanka, and Bangladesh to the U.S. East Coast; retains voluntary rate authority for the remainder of the scope; retains sailing vessel-sharing authority for the entire scope; updates Contship's name to indicate its status as a subsidiary of CP Ships (UK) Limited; and changes the name of the agreement to the Indamex Agreement.

Agreement No.: 011779.

Title: Tropical/Kent Agreement.

Parties: Kent Line International Limited, Tropical Shipping & Construction Co., Ltd.

Synopsis: Under the agreement, Kent Line agrees not to compete as a container liner operator for a period of five years in the trades between Canada, the U.S. East Coast, and the Caribbean. This is part of the consideration associated with Tropical's purchase of Kent's assets in these trades.

By Order of the Federal Maritime Commission.

Dated: October 26, 2001.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–27400 Filed 10–30–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocation

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary license has been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 15865N.

Name: Davis International Trade and Transportation Organization, Inc. dba Ditto.

Address: 6610 Tributary Street, Suite 200, Baltimore, MD 21224.

Date Revoked: May 10, 2000.

Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 01–27399 Filed 10–30–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation, Intermediary Applicant:

Cargo Control Express, Inc. dba Ramses Logistics Co., 2782 Engel Drive, Los Alamitos, CA 90702. Officer: Christine Kim, President, (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Coltrans (USA), Inc., 10925 N.W. 27th Street, Suite 201, Miami, FL 33172. Officers: Consuelo Suarez, Vice President-Sea/Air Operations, (Qualifying Individual), Jochen Raute, President.

Logenix International LLC, 13800 Coppermine Road, Suite 255, Herndon, VA 20171. Officer: Ron Cruise, President/CEO, (Qualifying Individual), James Halstead, Vice President.

Dated: October 26, 2001.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–27398 Filed 10–30–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 14, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. R. Steven Lutterbach, Michigan City, Indiana; to acquire voting shares of Alliance Financial Corp., New Buffalo, Michigan, and thereby indirectly acquire voting shares of Alliance Banking Company, New Buffalo, Michigan.

Board of Governors of the Federal Reserve System, October 25, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–27322 Filed 10–30–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the

nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 26, 2001.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. HFB Financial Corporation, Middlesboro, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Home Federal Bank, Middlesboro, Kentucky.

Board of Governors of the Federal Reserve System, October 25, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–27321 Filed 10–30–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 11:30 a.m. (EST), November 13, 2001.

PLACE: 4th Floor, Conference Room 4506, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the October 9, 2001, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of KPMG LLP audit reports:

(a) Policies and Procedures of the Federal Retirement Thrift Investment Board Administrative Staff

(b) Thrift Savings Plan F, C, S, and I Fund Investment Management Operations at Barclays Global Investors, N.A.

4. Semiannual review of status of audit recommendations.
5. Quarterly investment policy review.
6. Annual ethics briefing.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: October 29, 2001.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 01–27446 Filed 10–29–01; 12:17 pm]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Announcement of the Establishment of the Secretary's Council on Public Health Preparedness

AGENCY: Office of Public Health and Science.

ACTION: Notice of Establishment of the Secretary's Council on Public Health Preparedness.

SUMMARY: The Office of the Secretary announces establishment of the Secretary's Council on Public Health Preparedness by the Secretary of Health and Human Services on October 22, 2001. The Secretary established this committee to respond to public health emergencies, which exist as a consequence of the terrorist attacks on September 11, 2001.

FOR FURTHER INFORMATION CONTACT: Harold P. Thompson, (202) 690–5605.

SUPPLEMENTARY INFORMATION:

Authority and Purpose

Pursuant to section 319 of the Public Health Service Act (42 U.S.C. 247D), the Secretary of Health and Human Services has determined that a public health emergency exists as a consequence of the terrorist attacks on September 11, 2001. The Secretary's Council on Public Health Preparedness, established pursuant to section 222 of the Public Health Service Act (42 U.S.C. §217a), will provide advice to the Secretary on appropriate actions to take to respond to this public health emergency and similar emergencies.

Function

The Council shall advise the Secretary regarding steps that the U.S. Department of Health and Human Services can take to (1) Improve the public health and health care infrastructure to better enable Federal, State, and local governments to respond to a public health emergency and, specifically, a bio-terrorism event; (2) ensure that there are comprehensive contingency plans in place at the Federal, State, and local levels to respond to a public health emergency and, specifically, a bio-terrorism event; and (3) improve public preparedness at the Federal, State, and local levels.

Structure

The Council shall consist of not more than 26 members appointed by the Secretary. Members shall be selected from State and local public health agencies, other components of the public health community, academia, and other appropriate stakeholders. Members shall be invited to serve for overlapping four year terms. Terms for more than two years are contingent upon the renewal of the Committee by appropriate action prior to its termination. Unless renewed by appropriate action, the Council will terminate on September 30, 2003.

Compensation

Members shall be paid at a rate of $188.00 for each day they are actively engaged in the performance of duties as members of the Council. Members also shall receive per diem and reimbursement of travel expenses incurred, in accordance with the Federal Travel Regulations, when travel becomes necessary to carry out duties in relation to Council membership.

Dated: October 26, 2001.

Arthur J. Lawrence,

Acting Principal Deputy Assistant Secretary for Health.

[FR Doc. 01–27414 Filed 10–30–01; 4:08 pm]

BILLING CODE 4150–28–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities.'' This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 13¼% for the quarter

ended September 30, 2001. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: October 24, 2001.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 01–27352 Filed 10–30–01; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

Mr. Sherman Smith, University of California at San Francisco: Based on the report of an investigation conducted by the University of California at San Francisco (UCSF) and information obtained by ORI during its oversight review, the U.S. Public Health Service (PHS) finds that Mr. Smith, former research technician, Division of Occupational and Environmental Medicine at UCSF, engaged in scientific misconduct by intentionally and knowingly fabricating and falsifying patient interview data as the sole interviewer in the PHS-funded UCSF Asthma Disability Study (Asthma Study). The UCSF Asthma Study was funded by National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health (NIH), grants K04 HL03225, R01 HL56438, and R29 HL48959, and National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), grant R01 OH03480.

Specifically, Mr. Smith intentionally falsified and fabricated the interviews of 107 patients in the Asthma Study. The falsification of the patient interviews was committed with an intent to deceive. This deception, in turn, had a material, negative impact on the Asthma Study in particular and on asthma research in general. The falsified and fabricated data were reported in ten publications, and fellow members of the Asthma Study Team had to spend over two years correcting the research data and were required to submit retractions or corrections for all ten publications produced by the study.

PHS has implemented the following administrative actions for the five (5) year period beginning October 9, 2001:

(1) Mr. Smith is prohibited from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

(2) Mr. Smith is debarred from eligibility for, or involvement in, nonprocurement transactions (*e.g.,* grants and cooperative agreements) of the Federal government and from contracting or subcontracting with any Federal government agency as defined in 45 CFR part 76 (Debarment Regulations).

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 01–27365 Filed 10–30–01; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submissiion for OMB Review; Comment Request

Title: Social Services Block Grant Post-Expenditure Report.

OMB No.: None.

Description: States are required to report their annual SSBG expenditures on a standard post-expenditure report, which includes a yearly total of adults and children served and annual expenditures in each of 29 service categories.

Respondents: 56.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Post-Expenditure Report	56	1	110	6160
Estimated Total Annual Burden Hours:				6160

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concenring the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: October 25, 2001.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 01–27350 Filed 10–30–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: IRS Project 1099.

OMB No.: 0970–0183.

Description: A Voluntary program which provides States' Child Support Enforcement agencies, upon their request access to the earned and unearned income information reported to IRS by employers and financial institutions. The IRS 1099 information

is used to locate noncustodial parents and to verify income and employment.

Respondents: State IV–D programs.

ANNUAL BURDEN ESTIMATES

Reporting	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
States	12	12	2	288

Estimated Total Annual Burden: 288.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Ms. Laura Oliven.

Dated: October 25, 2001.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 01–27351 Filed 10–30–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Announcement of Financial Assistance to Expand Head Start Enrollment to Unserved Communities.

AGENCY: Administration on Children, Youth and Families, ACF, DHHS.

ACTION: Correction.

SUMMARY: This document contains a correction to the Notice that was published in the **Federal Register** on Monday, September 24, 2001.

In Appendix A, add Bloomfield County, Colorado to the list of geographic areas currently unserved by Head Start grantees, and delete Lemhi County, Idaho because it is a served community.

FOR FURTHER INFORMATION CONTACT: The ACYF Operations Center at 1815 N. Fort Myer Drive, Suite 300, Arlington, VA 22209 or telephone: 1–(800)–351–2293, or E. Mail to: *ehs@lognet.com.*

Dated: October 25, 2001.

James A. Harrell,

Acting Commissioner, Administration on Children, Youth, and Families.

[FR Doc. 01–27375 Filed 10–30–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1305]

Compliance Policy Guide: ''Apple Juice, Apple Juice Concentrates, and Apple Juice Products—Adulteration with Patulin,'' Availability; and ''Patulin in Apple Juice, Apple Juice Concentrates and Apple Juice Products,'' Supporting Document; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a compliance policy guide (CPG) entitled ''Apple Juice, Apple Juice Concentrates, and Apple Juice Products—Adulteration with Patulin.'' This document is intended to make FDA offices and the industry aware of FDA's guidance for enforcement concerning apple juice, apple juice concentrates, and apple juice products that contain patulin, a toxic substance produced by molds that may grow on apples and that has been found to occur at high levels in some apple juice products offered for sale in the United States. The agency also is announcing the availability of a document entitled ''Patulin in Apple Juice, Apple Juice Concentrates and Apple Juice Products'' (final supporting document).

DATES: Submit written or electronic comments on the CPG or the final supporting document at any time.

ADDRESSES: Submit written requests for single copies of the CPG entitled ''Apple Juice, Apple Juice Concentrates, and Apple Juice Containing Products—Adulteration with Patulin'' and/or the final supporting document entitled ''Patulin in Apple Juice, Apple Juice Concentrates and Apple Juice Products'' to the Office of Plant and Dairy Foods and Beverages (HFS–305), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204. Send two self-addressed adhesive labels to assist that office in processing your request. Submit written comments to the Docket Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to these documents.

FOR FURTHER INFORMATION CONTACT:

Technical questions concerning patulin in apple juice products: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFS–305), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5321, FAX 202–205–4422, e-mail: mkashtoc@cfsan.fda.gov.

Questions concerning regulatory actions: MaryLynn Datoc, Office of Enforcement (HFC–230), Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0413, FAX 301–827–0482, e-mail: mdatoc@ora.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of June 16, 2000 (65 FR 37791), FDA announced the availability of a draft CPG entitled ''Apple Juice, Apple Juice Concentrates, and Apple Juice Products—Adulteration with Patulin'' and a draft supporting document entitled ''Patulin in Apple Juice, Apple Juice Concentrates, and Apple Juice Products.'' The agency has finalized the draft CPG and the draft supporting document after considering the

comments we received on these documents.

FDA received four comments on these two documents, three from food industry associations and one from an organization representing several foreign governments. Three of the comments supported the draft CPG and draft supporting document and did not raise any questions.

The fourth comment posed three questions about the action level and the safety assessment described in the draft supporting document. FDA has considered these questions and has responded to them in the revised supporting document.

II. Significance of Guidance

This CPG is being issued as guidance consistent with FDA's good guidance practices regulation in 21 CFR 10.115. The CPG represents the agency's current thinking on its enforcement process concerning the adulteration of apple juice, apple juice concentrates, and apple juice products with patulin. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Comments

Interested persons may, at any time, submit to the Docket Management Branch (address above) written or electronic comments concerning the CPG entitled ''Apple Juice, Apple Juice Concentrates, and Apple Juice Products—Adulteration with Patulin'' or the final supporting document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments also may be submitted electronically. A copy of the CPG and the final supporting document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the CPG at http://www.fda.gov/ora under ''Compliance References.'' The supporting document may be accessed at http://www.cfsan.fda.gov under the heading ''How to Obtain FDA Food & Cosmetic Guidance Documents.''

Dated: October 22, 2001.

Dennis E. Baker,,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 01–27319 Filed 10–30–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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.

Proposed Project: The National Health Service Corps Uniform Data System (OMB No. 0915–0232): Extension

The National Health Service Corps (NHSC) of the Bureau of Health Professions (BHPr), Health Resources and Services Administration (HRSA), is committed to improving the health of the Nation's underserved by uniting communities in need with caring health professionals and by supporting communities' efforts to build better systems of care.

The NHSC needs to collect data on its programs to ensure compliance with legislative mandates and to report to Congress and policymakers on program accomplishments. To meet these objectives, the NHSC requires a core set of information collected annually that is appropriate for monitoring and evaluating performance and reporting on annual trends. The following information will be collected from each site: services offered and delivery method; users by various characteristics; staffing and utilization; charges and collections; receivables, income, and expenses; and managed care.

The estimated burden is as follows:

Type of report	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Universal Report	620	1	27	16,740

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–22, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: October 25, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–27366 Filed 10–30–01; 8:45 am]

BILLING CODE 4515–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA)

publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: State-by-State Self Assessment of Trauma Care Systems—(NEW)

The Health Resources and Services Administration (HRSA) proposes to collect baseline data from the 56 States and Territories on their current trauma care systems and self-identified unmet needs to achieve minimum standards for a comprehensive statewide trauma care program. This information will be used to establish a national strategy to assist in future grant opportunities to the States to improve or enhance their basic systems infrastructure in trauma care. The survey includes an assessment of trauma care systems, readiness to participate in disaster relief efforts, and infrastructure development needs. HRSA's Maternal and Child Health Bureau (MCHB) and the Office of Rural Health Policy and the Department of Transportation's Emergency Medical Services Division are jointly administering this project. HRSA has included national performance measures for Trauma/EMS for this project in accordance with the requirements of the ''Government Performance and Results Act (GPRA) of 1993'' (Public Law 103–62). This act requires the establishment of measurable goals for Federal programs that can be reported as part of the budgetary process, thus linking funding decisions with performance.

The estimated response burden is as follows:

Type of form	Number of respondents	Responses per respondent	Burden hour per response	Total burden hours
Trauma Survey	54	1	9	486
Analysis	54	1	1	54
Disaster Module	54	1	9	486
Total	54	3		1026

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 25, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–27367 Filed 10–30–01; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Comprehensive Conservation Plan and Environmental Assessment for Seedskadee National Wildlife Refuge, Green River, WY

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability.

SUMMARY: Pursuant to the Refuge Improvement Act of 1997, the U.S. Fish and Wildlife Service has published the Draft Seedskadee National Wildlife Refuge Comprehensive Conservation Plan and Environmental Assessment. This Plan describes how the FWS intends to manage the Seedskadee NWR for the next 10 to 15 years.

DATES: Submit written comments by November 30, 2001. All comments need to be addressed to: Carol Damberg, Refuge Manager, U.S. Fish and Wildlife Service, Seedskadee National Wildlife Refuge, P.O. Box 700, Green River, WY 82935

ADDRESSES: A copy of the Draft Plan may be obtained by writing to U.S. Fish and Wildlife Service, Seedskadee NWR, P.O. Box 700, Green River, WY 82935 or from *http://www.r6.fws.gov/larp/.*

FOR FURTHER INFORMATION CONTACT: Carol Damberg, U.S. Fish and Wildlife Service, Seedskadee NWR, P.O. Box 700, Green River, WY 82935, phone 307/875–2187; fax 307/875–4425; E-Mail: *carol_damberg@fws.gov.*

SUPPLEMENTARY INFORMATION: The 26,382-acre Seedskadee National Wildlife Refuge is located within the Central Flyway, the Upper Colorado River Ecosystem, and the Green River Basin in southwestern Wyoming, about 37 miles northwest of the city of Green River, WY. Seedskadee NWR was established in 1965 through the Colorado River Storage Project Act of 1956. Section 8 of this Act provided for the establishment of wildlife habitat development areas to offset the loss of wildlife habitat resulting from reservoir development in the Colorado River Drainage. The Seedskadee Reclamation Act of 1958 specifically authorized acquisition of lands for Seedskadee NWR. Seedskadee NWR's purpose is defined by two pieces of Federal enabling legislation. The principal purpose of Seedskadee NWR is to provide for the conservation, maintenance, and management of wildlife resources and its habitat including the development and improvement of such wildlife resources (Fish and Wildlife Coordination Act 16 U.S.C. 664). Additionally, the Refuge is charged to protect the scenery, cultural resources, and other natural resources and provide for public use and enjoyment of compatible wildlife-dependent activities (Colorado River Storage Act 43 U.S.C. 620g). Besides these, the 35th legislature of the State of Wyoming passed enrolled Act No. 54 in 1959 ''providing consent of the State of Wyoming to the acquisition by the United States where approved by the Wyoming Game and Fish Commission and the State Land Board, of lands for the establishment of migratory bird refuges.'' All efforts leading to the preparation of this draft CCP were undertaken to provide the Refuge with a vision for the future, guidelines for wildlife and habitat management over the next 15 years to ensure progress is made toward attaining the mission and goals of Seedskadee NWR and the Refuge System, and to comply with Congressional mandates stated in the National Wildlife Refuge System Improvement Act of 1997. The CCP will be used to prepare step-down management plans and revise existing plans. It also will be used to prepare budgets which describe specific actions to be taken by the Refuge over the next

15 years. Given that new information, guidance and technology frequently change and become available, the CCP will be updated as necessary throughout the 15-year period.

Dated: October 10, 2001.

John A. Blankenship,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 01–27373 Filed 10–30–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice.

Applicant: Kevin L. Reid, Rio Rancho, NM, PRT–041574.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Fred H. Palmer, Kremmling, CO, PRT–048683.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Written data, comments, or requests for copies of these complete applications or requests for a public hearing on these applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: The Newark Museum, Newark, NJ, PRT–042580.

Permit Type: Import for public display.

Name and Number of Animals: Polar bear (*Ursus maritimus*), One (1).

Summary of Activity to be Authorized: The applicant requests a permit to import a polar bear skin and skull.

Source of Marine Mammals: Southern Beaufort Sea population, Canada.

Period of Activity: 1 year, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281.

Dated: October 19, 2001.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 01–27388 Filed 10–30–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Yakima River Basin Conservation Advisory Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal.

SUMMARY: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Public Law 92–463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is renewing the Yakima River Basin Conservation Advisory Group (CAG). The purpose of the Committee is to provide assistance and recommendations to the Secretary of the Interior and the State of Washington on the structure and implementation of the Yakima River Basin Water Conservation Program. In consultation with the State, the Yakima Nation, Yakima River basin irrigators, and other interested and related parties, six-members and a facilitator are appointed to serve on the Yakima River Basin Water Conservation Advisory Group (CAG).

The basin conservation program is structured to provide economic incentives with cooperative Federal, State, and local funding to stimulate the identification and implementation of structural and nonstructural cost-effective water conservation measures in the Yakima river basin. Improvements in the efficiency of water delivery and use will result in improved streamflows for fish and wildlife and improve the reliability of water supplies for irrigation.

FOR FURTHER INFORMATION CONTACT: Jim Esget, Manager, Yakima River Basin Water Enhancement Program, telephone (509) 575–5848, extension 267.

The certification of renewal is published below:

Certification

I hereby certify that renewal of the Yakima River Basin Conservation Advisory Group is in the public interest in connection with the performance of duties imposed on the Department of the Interior.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 01–27395 Filed 10–30–01; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

[Investigation 332–325]

The Economic Effects of Significant U.S. Import Restraints: Third Update

AGENCY: International Trade Commission

ACTION: Notice of third update report and scheduling of public hearing, corrected.

EFFECTIVE DATE: October 19, 2001.

SUMMARY: The Commission has announced the schedule for its third update report in investigation No. 332–325, The Economic Effects of Significant U.S. Import Restraints, and has established deadlines for the submission of requests to appear at the hearing and for the filing of written submissions as set forth below. The investigation was requested by the Office of the U.S. Trade Representative (USTR) in May 1992. That request called for an initial investigation and subsequent updates, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Sandra Rivera, Project Leader (202–205–3007) or Kyle Johnson, Deputy Project Leader (202–205–3229), Office of Economics, U.S. International Trade Commission, Washington, DC, 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

Background

The Commission instituted this investigation following receipt on May 15, 1992 of a request from the USTR. The request asked that the Commission conduct an investigation assessing the quantitative economic effects of significant U.S. import restraints on the U.S. economy, and prepare periodic update reports following the submission of the first report. The first report was delivered to the USTR in November 1993, the first update in December 1995, and the second update in May 1999. In this third update report, the Commission will assess the economic effects of significant tariff and non-tariff U.S. import restraints on U.S. consumers, on the activities of U.S. firms, on the income and employment of U.S. workers, and on the net economic welfare of the United States. The assessment will not include import restraints resulting from final antidumping or countervailing duty investigations, section 337, and 406 investigations, or section 301 actions.

The initial notice of institution of this investigation was published in the **Federal Register** of June 17, 1992 (57 F.R. 27063).

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on December 4, 2001. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than 5:15 p.m., November 9, 2001. Any prehearing briefs (original and 14 copies) should be filed not later than close of business, November 14, 2001; the deadline for filing post-hearing briefs or statements is close of business, January 10, 2002. In the event that, as of the close of business on November 9, 2001, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–2000) after November 9, 2001, to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on January 10, 2002. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means.

List of Subjects

U.S. Import Restraints, Nontariff measures (NTM), Tariffs, Imports.

By order of the Commission.
Issued: October 26, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–27391 Filed 10–30–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 22, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 219–8904 or e-mail *Howze-Marlene@dol.gov*).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for PWBA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: Procedure for Application for Exemption from the Prohibited Transaction Provisions of Section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA).

OMB Number: 1210–0060.

Affected Public: Business or other for-profit; Individuals or households; and Not-for-profit institutions.

Frequency: On occasion.

Number of Respondents: 116.

Number of Annual Responses: 116.

Total Burden Hours: 0.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $162,648.

Description: Section 408(a) of ERISA authorizes the Secretary of Labor to grant exemptions from the prohibited transaction sections of 406 and 407(a) of ERISA and directs the Secretary to establish a procedure with respect to such provisions. This regulation provides a procedure that requires applications for exemption to make certain disclosures to the Department of Labor and to participants and beneficiaries.

There are two information disclosure requirements incorporated within the exemption procedure regulation. The first requirement, that an applicant for an exemption disclose information regarding the application and certify to that information, is necessary in order for the Department to make an informed determination regarding the application. The second requirement, notice to interested persons, ensures that participants and beneficiaries are informed of the application for exemption and have an opportunity to respond.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–27354 Filed 10–30–01; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB review; Comment Request

October 24, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or E-Mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7136), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Extension of a currently approved collection.

Title: Unemployment Insurance (UI) State Quality Service Plan (SQSP).

OMB Number: 1205–0132.

Affected Public: State, Local, or Tribal Government.

Frequency: Annually and Quarterly.

Type of Response: Reporting.

Number of Respondents: 53.

Number of Annual Responses: 835.

Average Time per Respondent: 40 hours.

Estimated Total Burden Hours: 2,121.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The State Quality Service Plan (ETA Handbook Number 336, 17th Edition) is one of several mechanisms for implementing UI PERFORMS, that allows for an exchange of information between the Federal and State partners to enhance the ability of the program to reflect the joint commitment to continuous improvement and client-centered services.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–27355 Filed 10–30–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on Increasing Pension Coverage, Participation and Savings Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Group assigned by the Advisory Council on Employee Welfare and Pension Benefit Plans to study the issue of increasing pension coverage, participation and savings will hold an open public meeting on Tuesday, November 13, 2001, in Room N–5437 A–C, U.S. Department of Labor Building, Second and Constitution Avenue NW., Washington, DC 20210.

The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon, is for Working Group members to complete the group's findings and/or recommendations to present to the Secretary of Labor.

Members of the public are encouraged to file a written statement pertaining to the topic by sending 20 copies on or before November 6, 2001, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753 or, after October 26, 2001, (202) 693–8668. Oral presentations will be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by November 6, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers

will be accepted and included in the record of the meeting if received on or before November 6.

Signed at Washington, DC this 25th day of October 2001.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 01–27356 Filed 10–30–01; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on Planning for Retirement; Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Tuesday, November 13, 2001, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study planning for retirement.

The session will take place in Room N–5437 A–C, U.S. Department of Labor Building, Second and Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 1 p.m. to approximately 4 p.m., is for working group members to finish their report and/or recommendations on ways in which individuals can be encouraged to better prepare for their retirement.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before November 6, 2001, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753 or, after October 26, 2001 (202) 693–8668. Oral presentations will be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by November 6, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 6.

Signed at Washington, D.C. this 25th day of October 2001.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 01–27357 Filed 10–30–01; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on Challenges to the Employment-Based Healthcare System; Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Wednesday, November 14, 2001, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study challenges to the employment-based healthcare system.

The session will take place in Room N–5437 A–C, U.S. Department of Labor Building, Second and Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon, is for working group members to complete their report and/or recommendations on the weaknesses, strengths and alternatives to employer-based health benefits.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before November 6, 2001, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753 or, after October 26, 2001, (202) 693–8668. Oral presentations will be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by November 6, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 6.

Signed at Washington, DC this 25th day of October 2001.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 01–27358 Filed 10–30–01; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

116th Full Meeting of the Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 116th open meeting of the full Advisory Council on Employee Welfare and Pension Benefit Plans will be held Wednesday, November 14, 2001, in the Secretary's Conference Room S–2508, U.S. Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

The purpose of the meeting, which will begin at 1:30 p.m. and end at approximately 3:30 p.m., is for members to present their Working Group reports and/or recommendations to be accepted by the full body and ultimately forwarded to the Secretary of Labor for her consideration. Outgoing members of the Advisory Council also will be presented certificates of appreciation for their three-years of service to the Council.

Members of the public are encouraged to file a written statement pertaining to any topics the Council studied during 2001 by submitting 20 copies on or before November 6, 2001 to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 219–8921 or, after October 26, 2001, (202) 693–8668. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon

Morrissey by November 6 at the address indicated.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 6, 2001.

Signed at Washington, DC this 25th day of October, 2001.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 01–27359 Filed 10–30–01; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE (01–136)]

NASA Advisory Council (NAC), Space Science Advisory Committee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee.

DATES: Wednesday, December 5, 2001, 8:30 a.m. to 5:30 p.m., and Thursday, December 6, 2001, 8:30 a.m. to 5:30 p.m.

ADDRESSES: Hilton Cocoa Beach Oceanfront, 1550 North Atlantic Avenue, Cocoa Beach, Florida 32931–3268.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–4452.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following:

—Associate Administrator's Program Status Report
—Division Managers' Reports
—Subcommittee Reports
—In-Space Propulsion
—Mars Exploration
—Strategic Planning Status
—Technology Programs Update
—GPRA Science Objectives Assessment

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 01–27392 Filed 10–30–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 01–137]

Aerospace Safety Advisory Panel (ASAP); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: Friday, November 9, 2001, 8 a.m. to 11:30 p.m. Eastern Standard Time.

ADDRESSES: Radisson Resort At the Port, Cape Canaveral, 8701 Astronaut Blvd., Cape Canaveral, FL 32920. Martinique Room. Hotel phone number is (321) 784–0000.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Lengyel, Aerospace Safety Advisory Panel Executive Director, Code Q–1, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0391, if you plan to attend.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room (40). The agenda for the meeting is to conduct deliberations on Calendar Year 2001 fact-finding activities and trip reports in preparation for the drafting of the Panel's Annual Report. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 01–27393 Filed 10–30–01; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

Note: The publication date for this notice will change from every other Wednesday to every other Tuesday, effective January 8, 2002. The notice will contain the same information and will continue to be published biweekly.

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 9, 2001 through October 19, 2001. The last biweekly notice was published on October 17, 2001 (66 FR 52794).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received

within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules 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 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By November 30, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Branch, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for

public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Assess and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document room (PDR) Reference staff at 1–800–397–4209, 304–415–4737 or by email to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Docket No. 50–219, Oyster Creek Generating Station, Ocean County, New Jersey

Docket Nos. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request: August 1, 2001.

Description of amendment request: The requested changes to the technical specifications (TSs) propose to revise requirements that have been superceded based on licensed operator training programs being accredited by the Institute for Nuclear Power Operations (INPO), promulgation of the revised 10 CFR part 55, Operators' Licenses, and adoption of a systems approach to training as required by 10 CFR 50.120, Training and qualification of nuclear power plant personnel. The same changes were requested by Exelon Generation Company, LLC (Exelon) for Braidwood Station, Units 1 and 2; Byron Station, Units 1 and 2; Dresden Nuclear Power Station, Units 2 and 3; LaSalle County Station, Units 1 and 2; Limerick Generating Station, Units 1 and 2; Peach Bottom Atomic Power Station, Units 2 and 3; and Quad Cities Nuclear Power Station, Units 1 and 2. The proposed no significant hazards consideration for those plants is published elsewhere in the **Federal Register** under Exelon Generation Company, LLC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

There will be no changes to the procedures by which the operators operate the plants. There will be no changes to the systems, structures, or components in the plants.

Based on the above, these proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident previously evaluated.

There will be no changes to the procedures by which the operators operate the plants. There will be no changes to the systems, structures, or components in the plants.

Therefore, the proposed changes will not create the possibility of a new or different kind of accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

There will be no change in the plants' systems, structures, or components, nor in the way in which they will be operated as a result of the proposed changes. Therefore, the proposed changes will not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Vice President, General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chiefs: Anthony J. Mendiola, Lakshminaras Raghavan.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: July 31, 2001.

Description of amendment request: The proposed amendment deletes requirements from the Technical Specifications (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the technical specifications (TS) for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 11, 2000 (65 FR 49271) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on October 31, 2000 (65 FR 65018). The licensee affirmed the applicability of the following NSHC determination in its application dated July 31, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information

needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety. Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.

NRC Section Chief: James W. Clifford.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: August 27, 2001.

Description of amendment request: The proposed amendment would revise the Technical Specification action and surveillance requirements associated with the containment air lock and expand the current guidance provided to address inoperable air lock components.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification changes to revise the action and surveillance requirements associated with the containment air lock will not cause an accident to occur and will not result in any change in the operation of the associated accident mitigation equipment. The containment air lock is not an accident initiator. The proposed changes will not revise the operability requirements (e.g., leakage limits) for the containment air lock. Proper operation of the containment air lock will still be verified. As a result, the design basis accidents will remain the same postulated events described in the Millstone Unit No. 2 Final Safety Analysis Report, and the consequences of the design basis accidents will remain the same. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the Technical Specifications do not impact any system or component that could cause an accident. The proposed changes will not alter the plant configuration (no new or different type of equipment will be installed) or require any unusual operator actions. The proposed changes will not alter the way any structure, system, or component functions, and will not significantly alter the manner in which the plant is operated. The response of the plant and the operators following an accident will not be different. In addition, the proposed changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. Involve a significant reduction in a margin of safety.

The proposed Technical Specification changes to revise the action and surveillance requirements associated with the containment air lock will not cause an accident to occur and will not result in any change in the operation of the associated accident mitigation equipment. The operability requirements for the containment air lock have not been changed. The containment air lock will continue to function as assumed in the safety analysis. In addition, the proposed changes will not adversely affect equipment design or operation, and there are no changes being made to the Technical Specification required safety limits or safety system settings that would adversely affect plant safety. Therefore, the proposed changes will not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.

NRC Section Chief: James W. Clifford.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: August 28, 2001.

Description of amendment request: The proposed amendment would revise the Technical Specifications by removing the surveillance requirement that verifies the automatic opening features of the safety injection tank outlet isolation valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification change to remove the surveillance

requirement that verifies the automatic opening features of the safety injection tank outlet isolation valves will not cause an accident to occur since the safety injection tanks and associated isolation valves are not accident initiators. In addition, the proposed change will not alter the operation of the associated accident mitigation equipment. The operability requirement for the safety injection tank outlet isolation valves to be deenergized open when the safety injection tanks are required to be operable will not be affected, and outlet isolation valve position will still be verified periodically. As a result, the design basis accidents will remain the same postulated events described in the Millstone Unit No. 2 Final Safety Analysis Report, and the consequences of the design basis accidents will remain the same. Therefore, the proposed change will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed Technical Specification change does not impact any system or component that could cause an accident. The proposed change will not alter the plant configuration (no new or different type of equipment will be installed) or require any unusual operator actions. The proposed change will not alter the way any structure, system, or component functions, and will not significantly alter the manner in which the plant is operated. The response of the plant and the operators following an accident will not be different. In addition, the proposed change does not introduce any new failure modes. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. Involve a significant reduction in a margin of safety.

The proposed Technical Specification change to remove the surveillance requirement that verifies the automatic opening features of the safety injection tank outlet isolation valves will not cause an accident to occur and will not result in any change in the operation of the associated accident mitigation equipment. The proposed change will not revise the operability requirement for the safety injection tank outlet isolation valves to be deenergized open when the safety injection tanks are required to be operable. The safety injection tanks will continue to be able to mitigate the design basis accidents as assumed in the safety analysis. In addition, the proposed change will not adversely affect equipment design or operation, and there are no changes being made to the Technical Specification required safety limits or safety system settings that would adversely affect plant safety. Therefore, the proposed change will not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.

NRC Section Chief: James W. Clifford.

Dominion Nuclear Connecticut Inc., et al., Docket Nos. 50–336 and 50–423, Millstone Nuclear Power Station, Unit Nos. 2 and 3, New London County, Connecticut

Date of amendment request: June 4, 2001.

Description of amendment request: The proposed amendment modifies the Millstone Nuclear Power Station, Unit No. 2 (MP2) and Unit No. 3 (MP3) Technical Specifications (TSs) to relocate selected MP2 and MP3 technical specifications related to the reactor coolant system to the respective Technical Requirements Manual (TRM), with the exception of MP3 Technical Specification section 4.4.10, which will be relocated to section 6 of MP3's TS. The Bases of the affected TSs will be modified to address the proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's analysis, which is based on the representation made by the licensee in the June 4, 2001, application, is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed requirements remain the same except that the requirements will be relocated to the TRM. Since the proposed requirements are the same, this proposed change will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Since the requirements remain the same, these proposed changes do not alter the way any system, structure, or component functions and do not alter the manner in which the plant is operated. The proposed changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

Since the proposed changes are solely to relocate the existing requirements, it does not affect plant operation in any way. Therefore, the proposed change will not result in a reduction in a margin of safety.

Based on the NRC staff's analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Hartford, CT 06141–5127.

NRC Section Chief: James W. Clifford.

Dominion Nuclear Connecticut Inc., et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: July 31, 2001.

Description of amendment request: The proposed amendment deletes requirements from the Technical Specifications (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the technical specifications (TS) for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 11, 2000 (65 FR 49271) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on October 31, 2000 (65 FR 65018). The licensee affirmed the applicability of the following NSHC

determination in its application dated July 31, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.

NRC Section Chief: James W. Clifford.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: September 20, 2001.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.8, ''Refueling, Fuel Storage and Operations with the Reactor Vessel Head Bolts Less Than Fully Tensioned,'' TS Table 4.1–2, ''Frequencies for Sampling Tests,'' and TS Section 5.4, ''Fuel Storage,'' to allow the credit for soluble boron in the criticality analysis of the spent fuel pit (SFP). The revisions also incorporate changes to the SFP rack layout by dividing it into sub-regions and specifying requirements for fuel assembly burnup and soluble boron concentration for various loading configurations in these sub-regions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

Current TS contain minimum requirements for the SFP boron concentration. The actual boron concentration in the SFP has been maintained at a higher value. The proposed changes to the TS establish new boron concentration requirements for the SFP water that are consistent with the new criticality analysis. Since soluble boron has already been maintained in the SFP water and is currently required by the TS, the implementation of this new requirement will have no effect on the normal SFP operations and maintenance.

The presence of an increased requirement for soluble boron in the SFP water does not increase the probability of a fuel assembly drop accident in the SFP. The handling of the fuel assemblies in the SFP has always been performed in borated water. The criticality analysis shows the consequences of a fuel assembly drop accident in the SFP are not affected when considering the presence of soluble boron since the rack k_{eff} remains ≤ 0.95.

Fuel assembly placement will continue to be controlled in accordance with approved fuel handling procedures and will be in accordance with TS spent fuel rack storage configuration limitations. The proposed SFP storage configuration limitations will be more complex but will be similar to those previously approved. Therefore, the new limitations will not significantly increase the probability of accident occurrence. There is no increase in the consequences of the accidental misloading of spent fuel assemblies into the spent fuel racks since the criticality analysis demonstrates that the SFP k_{eff} will remain ≤ 0.95 following an accidental misloading.

There is no increase in the probability of the loss of normal cooling to the spent fuel pit water when considering the presence of soluble boron in the pit water for subcriticality control since a high concentration of soluble boron has always been maintained in the SFP water.

Soluble boron requirements for mitigating reactivity effects due to increased pool temperatures are adequately met by the proposed increase in minimum TS soluble boron concentration. A negligible increase in

the probability of a criticality accident due to increased pool temperature exists with the proposed TS changes, as the minimum soluble boron concentration will not change. The positive reactivity introduced as a result of the higher TS boron concentration effect on moderator reactivity coefficient will be sufficiently mitigated by the substantial margin to the amount actually required to maintain $k_{eff} \leq 0.95$.

Decreased fuel temperatures will increase the water density in the SFP, therefore increasing the thermal neutron flux, possibly causing an increase in reactivity. This density increase will increase the differential worth of the soluble boron but the excess soluble boron in the SFP is more than sufficient to offset any reactivity increase introduced by a temperature decrease.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Spent fuel handling accidents are not new or different types of accidents, they have been analyzed for the UFSAR [Updated Final Safety Analysis Report] and in Criticality Analysis reports associated with License Amendment 150 up to the nominal 5.0 $^{w}/o$ ^{235}U [weight percent uranium-235] that is assumed for the proposed change.

A dilution of the SFP soluble boron has always been a possibility. However the boron dilution event previously had no consequences since boron was not previously credited. With the proposed TS, credit is taken for soluble boron. So a boron dilution has been evaluated as a possible new accident. The evaluation concluded a boron dilution accident was not credible, that processes were in place to detect and mitigate the possible events, and that, even if the SFP boron concentration was diluted to zero, criticality would not occur. Therefore, there would be no additional hazards if this request were approved.

There is no other change in the plant configuration or equipment design.

Therefore, the proposed change does not create a new accident initiator or precursor, or create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in [a] margin of safety.

The TS changes proposed by this LAR [license amendment request] and the resulting spent fuel storage operation limits will provide adequate safety margin to ensure that the stored fuel assembly array will always remain subcritical. These limits are based on the plant specific criticality analysis and boron dilution analysis. The proposed TS changes rely upon known and predictable reactivity effects to ensure required criticality margins in the SFP.

While the criticality analysis utilizes credit for soluble boron, storage configurations have been defined using 95/95 k_{eff} calculations to ensure the spent fuel rack k_{eff} will be <1.0 with no soluble boron. Soluble boron credit is used to offset uncertainties, tolerances, and off-normal conditions and to provide subcritical margin such that the SFP k_{eff} is maintained ≤0.95.

The loss of substantial amounts of soluble boron from the SFP, which could lead to k_{eff} exceeding 0.95, has been evaluated and shown to be not credible. An evaluation has been performed that shows that the dilution of the SFP boron concentration from 2000 ppm [parts per million] to 786 ppm is not credible. Also the spent fuel rack k_{eff} will remain <1.0 with the SFP flooded with unborated water. These safety analyses demonstrate a level of safety comparable to the conservative criticality analysis approved for License Amendment 150 and show that the requirements of 10CFR50.68 are met.

The reactivity credit for additional poisons in the spent and fresh fuel assemblies increases the margin of safety in the SFP. No credit is taken for Boraflex in certain regions, when in reality some residual Boraflex does remain in these regions. In regions that do take credit for Boraflex, the amount of credit is conservative. These conservatisms add an increased safety margin. Predictions of the effective neutron multiplication factors have shown that, under the worst of scenarios, the SFP remains subcritical when conservative credit for future expected loss of Boraflex poison plates is considered.

The analysis show that the level of safety required by 10CFR50.68 is achieved for the IP2 [Indian Point 2] SFP with the proposed TS.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Generating Co., Pilgrim Station, 600 Rocky Hill Road, Plymouth, MA 02360.

NRC Section Chief: L. Raghavan, Acting.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: September 20, 2001.

Description of amendment request: The proposed amendment deletes requirements from the Technical Specifications (TSs) (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the TSs for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 11, 2000 (65 FR 49271) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on October 31, 2000 (65 FR 65018). The licensee affirmed the applicability of the following NSHC determination in its application dated September 20, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 [Three Mile Island 2] accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in [a] Margin of Safety.

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in [a] margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: L. Raghavan, Acting.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: September 20, 2001.

Description of amendment request: The proposed amendment would allow the one-time extension of the intervals for selected Technical Specification (TS) surveillance requirements (SRs) to enable the tests to be performed during the next refueling outage starting no later than November 19, 2002. Specifically, the surveillance interval would be extended for certain SRs associated with the volume control tank (VCT), residual heat removal system (RHR) , emergency diesel generators (EDGs), and shock suppressors (snubbers). In addition, the proposed amendment would: (1) Correct the channel functional test interval in Items 3 and 4 of TS Table 4.10–4 and Items 4 and 5 of Table 4–10–4, (2) delete alternate inspection requirements for the steam generator snubbers, and (3) remove the reference to a prior one-time extension of checks, calibrations and tests for certain instrument channels in TS Table 4.1–1 that is no longer applicable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

There is no change to the design, function, or capability of any plant structure, system, or component as a result of the proposed surveillance interval extensions. Hence there is no change in the probability of occurrence of an accident previously evaluated.

The proposed surveillance interval extensions do not affect the ability of any plant structure, system, or component to mitigate the consequences of any accident previously evaluated. The surveillance interval extensions do not alter or prevent the ability of the affected structures, systems, and components to perform their intended functions.

[VCT]

A statistical analysis of channel uncertainty for a proposed 31 month operating cycle has been performed. It confirms that the channel drift for the proposed 31 month interval is bounded by the existing drift allowance used in the current uncertainty calculations. Therefore, there is no expected decrease in reliability for the VCT level channel for the proposed 31 month operating cycle. Since there is no expected decrease in the reliability of the VCT level channels, the design safety functions of the VCT are not affected.

[RHR]

Since the past test data supports the integrity of the system and an extended standby period is not expected to affect any potential leak path, there is a reasonable expectation that the RHR and Safety Injection systems will continue to perform their intended safety functions without excessive leakage. It is concluded that a one-time extension of less than one month for the leakage test surveillance intervals will have minimal impact on the system reliability.

[EDG]

The identified anomalies with valve and filter operation for EDG 23 were evaluated and corrected and are not indicative of any inability of the machine to meet performance requirements. The anomalous adjustment affecting movement of the fuel control lever arm for EDG 22 was properly evaluated and eliminated as evidenced by subsequent successful testing. Therefore, the historical data together with the positive verification of the adequacy of corrective actions for previous test failures demonstrate that the EDGs have met the required performance criteria. Therefore the ability of the EDGs to mitigate accidents is not affected by this proposed change.

Failure of an EDG cannot, of itself, initiate an accident.

[Snubbers]

The TS functional testing program requires a sampling program that provides a 95% confidence level that 90–100% of the snubbers operate within acceptance limits. For each snubber failing the functional test an additional sample lot must be selected and tested to assure that the required confidence level is maintained. The past functional test history with very few functional test failures provides assurance that an extension in the surveillance will not

result in increased snubber failures. In all cases, the functional test failures were thoroughly analyzed and appropriate action was taken to prevent recurrence. Subsequent testing resulted in all snubbers meeting their design requirements.

The operability of snubbers is not affected by the deletion of the allowance to separately group steam generator snubbers for the purposes of determining inspection intervals.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not involve any physical design change or operational change to any plant system, structure or component. Thus a new failure mode is not introduced. Therefore, the proposed changes do not create a new accident initiator or precursor, or create the possibility of a new or different kind of accident from any accident previously evaluated.

[VCT]

The proposed change does not involve the addition of any new or different type of equipment, nor does it involve operating equipment required for safe operation of the facility in a manner that is different from that addressed in the Updated Final Safety Analysis Report (UFSAR). The proposed change in the surveillance interval has been evaluated to have a negligible effect on the reliability of the existing instruments.

[RHR]

The proposed change does not involve the addition of any new or different type of equipment. Nor does it involve operating equipment required for safe operation of the facility in a manner that is different from that addressed in the UFSAR.

[EDG]

The proposed change does not involve the addition of any new or different type of equipment, nor does it involve operating equipment required for safe operation of the facility in a manner that is different from that addressed in the UFSAR. Also, the increased surveillance interval (one-time only) will not adversely affect the reliability of the EDGs.

[Snubbers]

The proposed license amendment does not create the possibility of a new or different kind of accident from any previously evaluated. The proposed change does not involve the addition of any new or different type of equipment, nor does it involve operating equipment required for safe operation of the facility in a manner that is different from that addressed in the UFSAR. Also, the increased surveillance interval (one-time only) will not adversely affect the snubbers.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

As a result of these proposed surveillance interval extensions, there are no changes to IP2's design or to the IP2 TS safety limits, limiting safety system settings, or limiting conditions for operation. The only change is a change to the surveillance testing frequency for affected structures, systems, and components.

The proposed surveillance interval extensions have been evaluated to not significantly degrade the reliability of any existing system, structure, or component. Therefore, testing in accordance with the proposed test intervals continues to ensure that the necessary quality of affected structures, systems, and components is maintained, that IP2 operation will be within safety limits, and that the IP2 limiting conditions for operation will be met.

The proposed surveillance interval extensions do not adversely affect the ability of any IP2 structures, systems, or components to function when required to mitigate any accident or licensing basis event.

[VCT]

The proposed change in surveillance interval resulting from an increased operating cycle will not result in a channel statistical allowance that impacts any TS limit or any UFSAR requirement. Protective functions will continue to occur so that safety analysis limits are not exceeded.

Based on past rest results, the one-time extension of nine days does not involve a significant reduction in a margin of safety.

[RHR]

There is minimal risk that a surveillance interval extension of less than one month will increase leakage in the piping systems under review beyond the TS limits or that the system performance will be influenced. Past test data indicate that there was no impact on the margin imposed by the TS.

[EDG]

The functional test history indicates the functional test failures were the result of actions independent of actual EDG load performance. Apart from these anomalous actions, the record does not indicate a potential for failure to meet performance criteria. In all cases, the functional test failures were thoroughly analyzed and appropriate actions were taken to prevent recurrence.

Subsequent testing resulted in the EDG meeting its design requirements.

There is no reduction of margin indicated by the surveillance testing. The proposed change for a one-time extension of the test interval does not adversely affect the performance of any safety related system, component or structure and does not result in increased severity of any of the accidents considered in the UFSAR. Surveillance test results indicate no trend toward margin reduction.

[Snubbers]

The objective of the functional test is to provide a 95% confidence level that 90–100% of the snubbers operate within the specified acceptance limits. The review of past test history indicates that this objective was met at the time of the testing. There are no identified trends that would suggest that the same success rate would not be maintained over the requested extension period. The proposed license amendment does not involve a significant reduction in a margin of safety. The proposed change for a one-time extension of the test interval does not adversely affect the performance of any safety related system, component or structure and does not result in increased severity of any of the accidents considered in the UFSAR.

Therefore, the one-time extension of less than one month for the functional tests does not involve a significant reduction in a margin of safety.

The proposed deletion of the allowance to separately group steam generator snubbers for the purpose of determining inspection intervals does not affect the effectiveness of the surveillance requirements. The steam generator snubbers will still be inspected at the interval required by the TS.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Generating Co., Pilgrim Station, 600 Rocky Hill Road, Plymouth, MA 02360.

NRC Section Chief: L. Raghavan, Acting.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: October 2, 2001.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Table 3.3–4, ''Engineered Safety Feature Actuation System Instrumentation Trip Values,'' Functional Unit 7.b, ''Loss of Power, 460 volt Emergency Bus Undervoltage,'' by changing the referenced bus from the 460 volt (V) bus to the 480 V bus, by removing the trip setpoint, and by slightly increasing the range of allowable values for the degraded voltage setting and its associated time delay.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The two degraded voltage protection relays that are provided on each of the 480 V safety buses act to mitigate the consequences of an

accident by detecting a sustained undervoltage condition, isolating the safety buses from offsite power, and starting the associated emergency diesel generator (EDG). This safety function is unchanged by the proposed allowable voltage setting revisions. The revised settings for the degraded voltage protection relays will continue to provide the safety function of protecting the associated Class 1E equipment from the effects of a low voltage condition. The time delays remain within those assumed in the ANO–2 [Arkansas Nuclear One, Unit 2] safety analyses. Additionally, the revised allowable voltage settings will not result in any unnecessary isolation from the off-site power sources. The relocation of trip setpoint values to station surveillance procedures allows operational flexibility to account for additional margins, drifts, or uncertainties while ensuring that the relays are set to actuate within the acceptable range of allowable values denoted in the TSs. Since the proposed change does not adversely impact the mitigating function of the relays, the consequences of an accident previously evaluated remains unchanged.

The ANO–2 technical specifications will continue to require the 480 V bus degraded voltage functions to be surveillance tested at their present frequency without changing the modes in which the surveillance is required or the modes of applicability for these components. The technical specifications will continue to require the same actions as currently exist for the inoperability of one or more of the 480 V bus degraded voltage relays.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change introduces no new modes of plant operation or new plant configuration that could lead to a new or different kind of accident from any previously evaluated being introduced. The 480 V bus degraded voltage relays are required to operate upon detection of a sustained undervoltage condition to protect the Class 1E components from damage from low voltage by initiating transfer of the 4160 V safety bus power source to the EDG. This safety function remains unchanged by the proposed allowable voltage setting revisions, and the proposed values continue to provide the required actions consistent with the ANO–2 safety analysis.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety.

The two degraded voltage relays located on each 480 V safety bus are provided to detect sustained undervoltage, isolate the safety buses, and start the EDGs. This safety function remains unchanged by the proposed revisions to the allowable values. The proposed changes to the allowable values for the degraded voltage relays incorporate channel uncertainties and calibration tolerances, while fully meeting their required safety functions of degraded voltage protection without resulting in undesired tripping of the offsite power source.

The slightly higher range of allowable values for the degraded voltage settings allows enhanced protection of the Class 1E components, but does not result in undesired tripping of the offsite power source for the analyzed grid minimum normal condition. In addition, the slight increase in the range of allowable values for the degraded voltage time delay remains well within the assumption of the accident analysis.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: October 2, 2001.

Description of amendment request: The proposed amendment would relocate the technical specification (TS) requirement that the reactor core be subcritical for a minimum of 175 hours prior to discharge of more than 70 assemblies to the spent fuel pool (SFP), to the technical requirements manual (TRM).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The accident of concern related to the proposed change is the fuel handling accident. This accident assumes a dropped fuel assembly. One of the assumptions made in the analysis is that fuel movement is delayed at least 100 hours after shutdown to allow for radioactive decay of the fission product inventory. TS 3.9.3.a provides this restriction. The analysis does not assume any further delay in fuel movement following the initial 100-hour decay period. The relocation of TS 3.9.3.b will not impact this assumption.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change relocates TS 3.9.3.b to the TRM. There are no changes to the design or operation of the facility proposed. Thus, there are no new or different kinds of accidents created. SFP cooling capability and the heat load generated by the movement of fuel into the SFP will continue to be evaluated under 10 CFR 50.59. The SFP cooling system includes two cooling pumps and one heat exchanger. In addition, several systems are available for makeup when needed. Under postulated accident conditions, when no pool cooling systems are operational, the maximum temperature at the inlet to the cells is assumed to be equal to the saturation temperature at atmospheric pressure or 212F [Fahrenheit] (allowed to boil). The proposed change does not increase the possibility of a complete loss of pool cooling.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

The proposed change relocates TS 3.9.3.b to the TRM. Following relocation, any future changes to TRM 3.9.3.b will be assessed under the guidance of 10 CFR 50.59. The ANO [Arkansas Nuclear One] 50.59 process will provide an evaluation to ensure heat loads transferred will be within the cooling capacity of the service water system. Analyses will continue to demonstrate that even in the event of a loss of SFP cooling, the maximum temperature in the pool is such that design limits associated with assuring the integrity of the fuel cladding are satisfied.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: October 2, 2001.

Description of amendment request: The proposed amendment would change the technical specification definitions of response time for the reactor trip system (RTS) and for engineered safety features (ESFs) to allow use of either an allocated or a

measured response time for select sensors in these two systems.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response time testing is not an initiator of any previously evaluated accident. The proposed change to the definition of RTS and ESF response time allows substitution of an allocated response time for selected sensors in lieu of measuring the sensor response time. The allocated response times adequately represent the response time of the components such that the safety systems utilizing these components will continue to perform their accident mitigation function as assumed in the safety analysis. Response time testing for the non-sensor portions of the channels will continue to use a series of sequential or overlapping test measurements.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical change to the plant. Modifications will not be made to existing components nor will any new or different types of equipment be installed. The proposed change modifies the definitions for RTS and ESF response time and allows the substitution of an allocated response time in lieu of measured sensor response time for selected sensors. The response time assumed in the accident analysis for the non-sensor portions of the channels will continue to be verified using a series of sequential or overlapping test measurements. Appropriate actions will be taken to ensure overall channel response time remains within the times specified in the accident analysis.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

The proposed change modifies the definitions of RTS and ESF response time to allow a substitution of an allocated response time for selected sensors in lieu of measuring the response time. The allocated time adequately represents the actual measured time for the associated sensors. The overall response time of each channel will continue to be measured using a series of sequential, overlapping or entire channel measurements to ensure the components actuated by each channel perform their accident mitigation function within the response time assumed in the safety analysis.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: September 21, 2001.

Description of amendment request: Entergy Operations, Inc. (Entergy, the licensee) is requesting approval of changes to the Waterford Steam Electric Station, Unit 3, Operating License and Technical Specifications associated with an increase in the licensed power level. The changes involve a proposed increase in the power level from 3,390 Megawatts thermal (MWt) to 3,441 MWt. These changes result from increased feedwater flow measurement accuracy to be achieved by utilizing high accuracy ultrasonic flow measurement instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The comprehensive analytical efforts performed to support the proposed change included a review of the Nuclear Steam Supply System (NSSS) systems and components that could be affected by this change. All systems and components will function as designed, and the applicable performance requirements have been evaluated and found to be acceptable.

The primary loop components (reactor vessel, reactor internals, control element drive mechanisms, loop piping and supports, reactor coolant pumps, steam generators, and pressurizer) continue to comply with their applicable structural limits and will continue to perform their intended design functions. Thus, there is no increase in the probability of a structural failure of these components. The Leak Before Break analysis conclusions remain valid, and thus the limiting break sizes determined in this analysis remain bounding. All of the NSSS will still perform the intended design functions during normal and accident conditions. The auxiliary systems and components continue to meet their applicable structural limits and will continue to perform their intended design functions. Thus, there is no increase in the probability of a structural failure of these components. All of the NSSS and Balance of Plant (BOP) interface systems will continue to perform their intended design functions. The main steam safety valves (MSSVs) will provide adequate relief capacity to maintain the steam generator pressures within design limits. The atmospheric dump valves and steam bypass valves meet design sizing requirements at the uprated power level. The current Loss of Coolant Accident (LOCA) hydraulic forcing functions are still bounding for the proposed 1.5 percent increase in power.

Because the integrity of the plant will not be affected by operation at the uprated condition, it is concluded that all structures, systems, and components required to mitigate a transient remain capable of fulfilling their intended functions. The reduced uncertainty in the flow input to the power calorimetric measurement allows the current safety analyses to be used, without change, to support operation at a core power of 3,441 megawatts thermal (MWt). As such, all Updated Final Safety Analysis Report (UFSAR) Chapter 15 accident analyses continue to demonstrate compliance with the relevant event acceptance criteria. Those analyses performed to assess the effects of mass and energy releases remain valid. The source terms used to assess radiological consequences have been reviewed and determined to either bound operation at the 1.5 percent uprated condition, or new analyses were performed to verify all acceptance criteria continue to be met.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No new accident scenarios, failure mechanisms, or single failures are introduced as a result of the proposed changes. The new installation of the LEFM [leading edge flow meter] CheckPlus system has been analyzed, and failures of this system will have no effect on any safety-related system or any systems, structures or components required for transient mitigation. All systems, structures, and components previously required for the mitigation of a transient remain capable of fulfilling their intended design functions. The proposed changes have no adverse effects on any safety-related system or component and do not challenge the performance or integrity of any safety related system.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will operation of the facility in accordance with this proposed change

involve a significant reduction in a margin of safety?

Operation at the uprated power condition does not involve a significant reduction in a margin of safety. Analyses of the primary fission product barriers have concluded that all relevant design criteria remain satisfied, both from the standpoint of the integrity of the primary fission product barrier and from the standpoint of compliance with the required acceptance criteria.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N. S. Reynolds, Esquire, Winston & Strawn 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois

Docket Nos. STN 50–454 and STN 50–455, Byron Station, Units 1 and 2, Ogle County, Illinois

Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Docket Nos. STN 50–277 and STN 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York County, Pennsylvania

Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: August 1, 2001.

Description of amendment request: The requested changes to the technical specifications (TSs) propose to revise requirements that have been superceded based on licensed operator training programs being accredited by the Institute for Nuclear Power Operations (INPO), promulgation of the revised 10 CFR part 55, Operators' Licenses, and adoption of a systems approach to training as required by 10 CFR 50.120, Training and qualification of nuclear power plant personnel. The same changes were requested by AmerGen Energy Company, LLC (AmerGen) for the Clinton Power Station, Oyster Creek, and Three Mile Island, Unit 1. The proposed no significant hazards consideration for those plants is published elsewhere in the **Federal Register** under AmerGen.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

There will be no changes to the procedures by which the operators operate the plants. There will be no changes to the systems, structures, or components in the plants.

Based on the above, these proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident previously evaluated.

There will be no changes to the procedures by which the operators operate the plants. There will be no changes to the systems, structures, or components in the plants.

Therefore, the proposed changes will not create the possibility of a new or different kind of accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

There will be no change in the plants' systems, structures, or components, nor in the way in which they will be operated as a result of the proposed changes. Therefore, the proposed changes will not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Vice President, General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chiefs: Anthony J. Mendiola, James W. Clifford.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: September 21, 2001.

Description of amendment request: The proposed amendment deletes requirements from the Technical Specifications (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the technical specifications (TS) for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 11, 2000 (65 FR 49271) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on October 31, 2000 (65 FR 65018). The licensee affirmed the applicability of the following NSHC determination in its application dated September 21, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite

radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Vice President, General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit 2, Beaver County, Pennsylvania

Date of amendment request: June 28, 2001.

Description of amendment request: The proposed amendment would revise the technical specification (TS) 3.1.1.4 upper limit for the moderator temperature coefficient (MTC) from 0×10^{-4} change in reactivity per degree Fahrenheit (''k/k/°F) to $+0.2 \times 10^{-4}$ ''k/k/°F for power levels up to 70 percent of rated thermal power (RTP), and ramping linearly to 0×10^{-4} ''k/k/°F from 70 percent to 100 percent RTP. The proposed change is needed to address future core designs with higher energy requirements, associated with plant operation at higher capacity factors.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change from a[n] MTC of 0×10^{-4} ''k/k/°F to a positive moderator temperature coefficient (PMTC) of $+0.2 \times 10^{-4}$ ''k/k/°F does not introduce an initiator of any design basis accident or event. The proposed change does not adversely affect accident initiators or precursors nor alter the configuration of the facility or the manner in which the plant is maintained. Thus, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The proposed change to a PMTC does not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change is consistent with the safety analysis assumptions and resultant consequences. Accident analyses affected by the proposed change have been reanalyzed and all applicable acceptance criteria have been met. Thus, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The change to a PMTC does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed), subsequently no new or different failure modes or limiting single failures are created. The plant will not be operated in a different manner due to the proposed change. All SSCs will continue to function as currently designed. Thus, the proposed change does not create any new or different accident scenarios.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

No. The proposed change to a PMTC does not involve revisions to any safety limits or safety system settings that would adversely impact plant safety. The proposed amendment does not alter the functional capabilities assumed in a safety analysis for any SSCs important to the mitigation and control of design bases accident conditions within the facility.

All of the applicable acceptance criteria (i.e., preventing reactor coolant system [RCS] or main steam system overpressurization, maintaining the minimum departure from nucleate boiling ratio [DNBR], preventing core uncovery, preventing fuel temperatures from exceeding their limit, preventing clad damage, and limiting the number of fuel rods that enter a departure from nucleate boiling [DNB] condition) for each of the analyses affected by the proposed change continue to be met. The conclusions of the UFSAR remain valid. Thus, since the operating parameters and system performance will remain within design requirements and safety analysis assumptions, safety margin is maintained.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Lakshminaras Raghavan, (Acting).

GPU Nuclear Inc., Docket No. 50–320, Three Mile Island Nuclear Generating Station, Unit 2, Dauphin County, Pennsylvania

Date of amendment request: June 21, 2001.

Description of amendment request: The proposed technical specifications change request (TSCR) No. 81 is to revise Three Mile Island Nuclear Generating Station, Unit 2 (TMI–2) Technical Specification (TS) Administrative Controls section that will provide consistency with the changes to the revised 50.59 rule of Title 10 of the *Code of Federal Regulations* (10 CFR) Regulations, as published in the **Federal Register** on October 4, 1999 (64 FR 53582).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes reflect the revised 50.59 rule, issued as a Final Rule in October 4, 1999, and do not impact the operation of any system or component assumed in any accident analysis. The proposed change does not change the requirement to perform a 50.59 review when required by the Technical Specification Administrative Controls. Based on the administrative nature of this change there will be no direct impact on the radiological source term. Therefore, these changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes are administrative in nature and do not involve a change to the plant design or operation. No new or different types of equipment will be installed as a result of this change. The proposed change is administrative in nature and makes the language in the Technical Specification Administrative Controls conform to the Final Rule, dated October 4, 1999, related to the 10 CFR 50.59 rule. No new accident mode or equipment failure modes are created by these changes. Therefore, these proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The proposed change does not impact or have a direct effect on any safety analysis assumptions. The proposed change is administrative in nature and makes the TS Administrative Control language conform to the Final Rule, dated October 4, 1999, related to the 10 CFR 50.59 rule. Changes to the facility that result in meeting the criteria of 10 CFR 50.59 will still require NRC approval pursuant to 10 CFR 50.59.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Robert A. Gramm.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station Unit No. 2, Oswego County, New York

Date of amendment request: October 5, 2001.

Description of amendment request: The licensee proposed to amend the Technical Specifications (TSs) to change the licensing basis requirement for establishing containment hydrogen monitoring ''within 30 minutes'' to ''within 3 hours'' of initiating emergency core cooling following a loss-of-coolant accident (LOCA).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the three standards of 10 CFR 50.92(c). The licensee's analysis is presented below:

1. The operation of Nine Mile Point Unit 2 in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Updated Safety Analysis Report (USAR) Chapter 15 accident analyses do not require or take credit for hydrogen monitoring to be established shortly after a loss of coolant accident (LOCA). Post-LOCA hydrogen production occurs over a long period of time, and an extension from 30 minutes to 3 hours for establishing hydrogen monitoring will have a positive impact on the ability of the operators to concentrate on their more immediate actions while having no negative impact on containment integrity or the long-term assessment efforts. Therefore, the proposed license amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Nine Mile Point Unit 2 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Control room operators use the containment hydrogen monitors following a LOCA to establish hydrogen control measures should it become necessary. The proposed license amendment would not eliminate the requirement to establish hydrogen monitoring, but would allow it to be delayed until those actions required to mitigate the accident and verify proper operation of essential safety equipment have been completed. The proposed extension maintains the requirement to establish hydrogen monitoring well before calculated conditions inside the containment indicate any need to initiate hydrogen control measures. Therefore, the proposed license amendment will not create a new or different kind of accident from any accident previously evaluated.

3. The operation of Nine Mile Point Unit 2 in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The need to establish hydrogen control measures will not be present within the first 3 hours following a LOCA since there will not be significant hydrogen accumulation. By extending the time allowed to establish containment hydrogen monitoring, the operators can remain focused on the actions necessary to mitigate the accident before directing their attention to hydrogen control measures and other long-term actions. The proposed extension maintains the requirement to establish hydrogen monitoring well before calculated conditions inside the containment indicate any need to initiate hydrogen control measures. Therefore, the proposed license amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendment involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: L. Raghavan, Acting.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant (DCPP), Units 1 and 2, San Luis Obispo County, California

Date of amendment requests: September 13, 2001.

Description of amendment requests: The proposed license amendments

would revise Technical Specification (TS) 3.7.16, ''Spent Fuel Pool Boron Concentration,'' TS 3.7.17, ''Spent Fuel Assembly Storage—Region 1/Region 2,'' and TS 4.3, ''Fuel Storage'' for DCPP Units 1 and 2, to allow the use of credit for soluble boron in the spent fuel pool criticality analysis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Response: No.

There is no increase in the probability of a fuel assembly drop accident in the spent fuel pool (SFP) when considering the presence of soluble boron in the SFP water for criticality control. The handling of the fuel assemblies does not change as a result of crediting soluble boron in the SFP.

There is no increase in the probability of the accidental misloading of a fuel assembly into the SFP racks when considering the presence of soluble boron in the SFP water for criticality control. Fuel assembly placement will continue to be controlled pursuant to approved fuel handling procedures and will be in accordance with the Technical Specification (TS) SFP storage configuration limitations.

There is no increase in the consequences of an accidental drop or accidental misloading of a fuel assembly into the SFP racks because the criticality analysis demonstrates that the pool will remain subcritical following either event even if the pool contains a boron concentration less than that currently specified in the TS. The current TS limitation will ensure that an adequate SFP boron concentration will be maintained.

There is no increase in the probability of the loss of normal cooling to the SFP water considering the presence of soluble boron in the pool water for subcriticality control since a high concentration of soluble boron has always been maintained in the SFP water.

There is no increase in the consequences of a loss of normal SFP cooling because the 2,000 ppm boron concentration required by TS provides significant negative reactivity to provide subcritical margin such that the SFP k_{eff} is maintained less than or equal to 0.95 up to boiling (212°F).

Therefore, the proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Response: No.

Spent fuel handling accidents are not new or different types of accidents; they have been analyzed in Section 15.5.22 of the Updated Final Safety Analysis Report (UFSAR).

Criticality accidents in the SFP are not new or different types of accidents; they have been analyzed in the UFSAR and in the Criticality Analysis reports associated with the specific license amendments for fuel enrichments up to 5.0 weight percent U–235.

Because soluble boron has always been required in the SFP water, and is currently required by TS, credit for soluble boron will have no effect on normal pool operation and maintenance. Crediting soluble boron in the SFP criticality analysis will only result in increased sampling to verify the boron concentration. This increased sampling frequency will not create the possibility of a new or different kind of accident.

The SFP dilution analysis demonstrates that a dilution which could increase the rack k_{eff} to greater than 0.95 is not a credible event. Therefore, crediting soluble boron in the SFP criticality analysis will not result in the possibility of a new kind of accident.

Revised specifications continue to specify the requirements for SFP storage configurations. The only significant changes relate to the criteria for determining the storage configuration. Because the proposed SFP storage configuration limitations will be similar to those currently contained in the TS, the new limitations will not have any significant effect on normal SFP operations and maintenance and will not create the possibility of a new or different kind of accident. A SFP loading verification will continue to be performed to ensure that the SFP loading configuration meets the specified requirements.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Response: No.

The TS changes proposed by this license amendment request and the resulting spent fuel storage limitations will provide an adequate safety margin to ensure that the stored fuel assembly array will always remain subcritical. Those limits are based on a plant specific criticality analysis performed for the Diablo Canyon Units 1 and 2 SFPs that includes technically supported margins.

While the criticality analysis utilized credit for soluble boron, storage configurations have been defined to ensure that the spent fuel rack k_{eff} will be less than 1.0 with no soluble boron with a 95 percent probability at a 95 percent confidence level. Soluble boron credit is used to offset uncertainties, tolerances and off-normal conditions, and to provide subcritical margin such that the SFP k_{eff} is maintained less than or equal to 0.95. Since k_{eff} is less than or equal to 0.95, the current margin of safety is maintained.

A substantial reduction in the SFP soluble boron concentration that could lead to exceeding a k_{eff} of 0.95 has been evaluated and shown not to be credible.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant (DCPP), Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: September 13, 2001.

Description of amendment requests: The proposed license amendments would modify Technical Specification (TS) 5.5.9, ''Steam Generator Tube Surveillance Program,'' to allow extension of steam generator tube W star alternate repair criteria for DCPP Units 1 and 2, from Cycles 10 and 11 to Cycles 12 and 13.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Of the various accidents previously evaluated, the extension of the steam generator (SG) tube W star (W*) alternate repair criteria (ARC) through Cycles 12 and 13 only affects the steam generator tube rupture (SGTR) accident evaluation and the postulated steam line break (SLB) accident evaluation. Loss-of-coolant accident (LOCA) conditions cause a compressive axial load to act on the tube. Therefore, since the LOCA tends to force the tube into the tubesheet rather than pull it out, it is not a factor in this evaluation.

For the SGTR accident, the required structural margins of the SG tubes will be maintained by the presence of the tubesheet. Tube rupture is precluded for cracks in the Westinghouse explosive tube expansion (WEXTEX) region due to the constraint provided by the tubesheet. Therefore, Regulatory Guide (RG) 1.121, ''Bases for Plugging Degraded PWR Steam Generator Tubes,'' margins against burst are maintained for both normal and postulated accident conditions.

WCAP–14797, Revision 1, defines a length, W*, of degradation free expanded tubing that provides the necessary resistance to tube pullout due to the pressure induced forces (with applicable safety factors applied). The W* length supplies the necessary resistive force to preclude pullout loads under both normal operating and accident conditions. The contact pressure results from the WEXTEX expansion process, thermal

expansion mismatch between the tube and tubesheet and from the differential pressure between the primary and secondary side. The proposed changes do not affect other systems, structures, components, or operational features. Therefore, the proposed change results in no significant increase in the probability of the occurrence of an SGTR or SLB accident.

The consequences of an SGTR accident are affected by the primary-to-secondary leakage flow during the accident. Primary-to-secondary leakage flow through a postulated broken tube is not affected by the proposed changes since the tubesheet enhances the tube integrity in the region of the WEXTEX expansion by precluding tube deformation beyond its initial expanded outside diameter. The resistance to both tube rupture and collapse is strengthened by the tubesheet in that region. At normal operating pressures, leakage from primary water stress corrosion cracking (PWSCC) in the W* length is limited by both the tube-to-tubesheet crevice and the limited crack opening permitted by the tubesheet constraint. No leakage has been observed in any in-situ test of W* indications identified to date. Consequently, negligible normal operating leakage is expected from cracks within the tubesheet region.

SLB leakage is limited by leakage flow restrictions resulting from the crack and tube-to-tubesheet contact pressures that provide a restricted leakage path above the indications and also limit the degree of crack face opening compared to free span indications. The total leakage, that is, the combined leakage for all such tubes, plus the combined leakage developed by any other ARC, are maintained below the maximum allowable SLB leak rate limit, such that off-site doses are maintained less than 10 CFR 100 guideline values.

Therefore, based on the above evaluation, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not introduce any changes or mechanisms that create the possibility of a new or different kind of accident. Tube bundle integrity is expected to be maintained for all plant conditions upon continued implementation of the W* ARC.

Axial indications left in service shall have the upper crack tip below the top of the tubesheet (TTS) by at least the value of the nondestructive examination (NDE) uncertainty and crack growth allowance, such that at the end of the subsequent operating cycle the entire crack remains below the tubesheet secondary face, thereby minimizing the potential for free span cracking and demonstrating that an acceptable level of risk is maintained for tubes returned to service under W* ARC. This repair criteria is in addition to ensuring that the upper crack tip is located below the bottom of the WEXTEX transition by at least the NDE measurement uncertainty. Condition monitoring will verify that all tubes returned to service under W* ARC remain below the TTS, including an allowance for NDE uncertainty.

These changes do not introduce any new equipment or any change to existing equipment. No new effects on existing equipment are created nor are any new malfunctions introduced.

Therefore, based on the above evaluation, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes maintain the required structural margins of the SG tubes for both normal and accident conditions. RG 1.121 is used as the basis in the development of the W* ARC for determining that SG tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the NRC staff for meeting General Design Criteria 14, 15, 31, and 32 by reducing the probability and consequences of an SGTR. RG 1.121 concludes that by determining the limiting safe conditions of tube wall degradation beyond which tubes with unacceptable cracking, as established by inservice inspection, should be removed from service or repaired, the probability and consequences of a SGTR are reduced. This RG uses safety factors on loads for tube-burst that are consistent with the requirements of Section III of the ASME Code.

For primarily axially oriented cracking located within the tubesheet, tube-burst is precluded due to the presence of the tubesheet. WCAP–14797, Revision 1, defines a length, W*, of degradation free expanded tubing that provides the necessary resistance to tube pullout due to the pressure induced forces (with applicable safety factors applied). Application of the W* ARC will preclude unacceptable primary-to-secondary leakage during all plant conditions. The methodology for determining leakage provides for large margins between calculated and actual leakage values in the W* ARC.

Plugging of the SG tubes reduces the reactor coolant flow margin for core cooling. Continued implementation of W* ARC will result in maintaining the margin of flow that may have otherwise been reduced by tube plugging.

Based on the above, it is concluded that the proposed changes do not result in a significant reduction of margin with respect to plant safety as defined in the Final Safety Analysis Report Update or Bases of the plant Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: August 17, 2001.

Description of amendment request: The proposed amendments delete requirements from the Technical Specifications (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the technical specifications (TS) for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 11, 2000 (65 FR 49271) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on October 31, 2000 (65 FR 65018). The licensee affirmed the applicability of the following NSHC determination in its application dated August 17, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The PASS was originally designed to perform many sampling and analysis

functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment requests, the requested changes do not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: October 1, 2001.

Description of amendment request: The proposed amendment deletes requirements from the Technical Specifications (TS) (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the TS for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 11, 2000 (65 FR 49271) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on October 31, 2000 (65 FR 65018). The licensee affirmed the applicability of the following NSHC determination in its application dated October 1, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management

strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas G. Eppink, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Section Chief: Richard J. Laufer, Acting.

Southern Nuclear Operating Company, Inc, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: May 3, 2001.

Description of amendment request: The proposed amendments would relocate cycle-specific reactor coolant system Technical Specifications parameters limits to the Core Operating Limits Report. Also, a reference to the Refueling Operations Boron Concentration is added to TS 5.6.5 to correct an omission.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment is a programmatic and administrative change that does not physically alter plant systems, nor does it impact the performance of their functions. No new equipment is added nor is installed equipment being changed or operated in a different manner. Because the design of the facility and system operating parameters are not being changed, the proposed amendment does not involve an increase in the probability or consequences of any accident previously evaluated.

The cycle-specific limits in the Core Operating Limits Report (COLR) will continue to be controlled by the Farley Nuclear Plant (FNP) programs and procedures. Each accident analysis addressed in the Final Safety Analysis Report (FSAR) will be examined with respect to changes in the cycle dependent parameters, which are obtained from the use of Nuclear Regulatory Commission (NRC) approved reload design methodologies, to ensure that the transient evaluation of new reloads are bounded by previously accepted analyses. This examination, which will be conducted per the requirements of 10 CFR 50.59, will ensure that future reloads will not involve a significant increase in the probability or consequences of an accident previously evaluated. The safety limits imposed in Technical Specification (TS) 2.1 are consistent with the values stated in the FNP FSAR.

This change does not involve an increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Relocation of the cycle-specific parameters has no influence or impact on, nor does it contribute in any way to the probability or consequences of an accident. No plant equipment, function or plant operation will be altered as a result of this proposed change. The cycle-specific parameters are calculated using the NRC approved methods and submitted to the NRC to allow the staff to continue to trend the values of these limits. The TS will continue to require operation within the core operating limits and appropriate actions will be required if these limits are exceeded. The safety limits are maintained in the COLR and appropriate actions will be required if these limits are exceeded. In addition, the minimum limit for Reactor Coolant System flow will be retained in the TS. The safety limits imposed in TS 2.1 are consistent with the values stated in the FNP FSAR.

This proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The Proposed change does not involve a significant reduction in a margin of safety.

The margin of safety is not affected by the removal of cycle-specific core operating limits from the TS. The margin of safety presently provided by current TS limits remains unchanged. Appropriate measures exist to control the values of these cycle-specific limits. The proposed amendment continues to require operation within the core limits as obtained from NRC approved reload design methodologies and the actions to be taken if a limit is exceeded remain unchanged.

The development of the limits for future reloads will continue to conform to those methods described in NRC approved documentation. In addition, each future reload will involve a 10 CFR 50.59 evaluation to assure that operation of the unit within the cycle-specific limits will not involve a significant reduction in the margin of safety.

The proposed changes to relocate cycle specific parameter limits to the COLRs will not affect plant design or system operating parameters, there is no detrimental impact on any equipment design parameters, and the plant will continue to operate within prescribed limits. The safety limits imposed in TS 2.1 are consistent with the values stated in the FNP FSAR.

This proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Section Chief: Richard J. Laufer, Acting.

Southern Nuclear Operating Company, Inc, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: June 5, 2001.

Description of amendment request: The proposed amendments would modify Technical Specifications (TS) Surveillance Requirement 3.4.14.1 to clarify that the frequency does not apply to Reactor Coolant System Pressure Isolation Valves in the Residual Heat Removal System flow path. Also, related TS Bases and editorial changes are part of this TS change.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to Surveillance Requirement (SR) 3.4.14.1 clarifies that the requirement to test Reactor Coolant System (RCS) Pressure Isolation Valves (PIVs) following valve actuation due to automatic or manual action or flow through the valve does not apply to PIVs in the Residual Heat Removal (RHR) flow path. This resolves a source of potential confusion and ensures that the testing requirements are implemented consistent with the historical licensing basis for Farley and the Improved Technical Specification conversion NRC Safety Evaluation Report. The valves will continue to be tested for back leakage every 18 months. The proposed change does not affect the consequences of a previously analyzed accident since the magnitude and duration of analyzed events are not impacted by this change. Thus, the consequences of a previously evaluated accident are unchanged.

Therefore, the proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change involves no change to the physical plant. It allows for a clarification to the testing requirements to ensure that the historical licensing basis for Farley is maintained. These valves are tested every 18 months to ensure that the back leakage is within acceptable limits. This testing will continue. These changes do not impact the function of the valves.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The physical plant is unaffected by this change. The proposed change does not impact accident offsite dose, containment pressure or temperature, emergency core cooling system (ECCS) or reactor protection system (RPS) settings or any other parameter that could affect a margin of safety. The clarification of the testing requirements ensures that future testing is consistent with the historical licensing basis for Farley.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Section Chief: Richard J. Laufer, Acting.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: September 10, 2001.

Description of amendment request: The proposed amendment deletes requirements from the Technical Specifications (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the technical specifications (TS) for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 11, 2000 (65 FR 49271) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on October 31, 2000 (65 FR 65018). The licensee affirmed the applicability of the following NSHC determination in its application dated September 10, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Section Chief: Richard J. Laufer, Acting.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: September 10, 2001.

Description of amendment request: The proposed amendment deletes requirements from the Technical Specifications (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the technical specifications (TS) for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 11, 2000 (65 FR 49271) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on October 31, 2000 (65 FR 65018). The licensee affirmed the applicability of the following NSHC determination in its application dated September 10, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any

Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Section Chief: Richard J. Laufer, Acting.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: April 1, 2001, as supplemented by letter dated July 26, 2001.

Brief description of amendments: The amendment revises Technical Specifications (TS) section 5.0, ''Administrative Controls,'' by (1) clarifying new diesel fuel oil limits for water and sediment, (2) revising guidance on changes to TS Bases consistent with changes to 10 CFR 50.59, (3) adding clarification to the requirements for the Safety Function Determination Program, (4) adding the CENTS computer code to the list of analytical methods used to determine core operating limits, and (5) revising the Core Operating Limits Report list of references to approved topical reports.

Date of issuance: October 15, 2001.

Effective date: October 15, 2001, and shall be implemented within 60 days of the date of issuance.

Amendment Nos.: Unit 1–137, Unit 2–137, Unit 3–137.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** May 2, 2001 (66 FR 22022).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 15, 2001.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: October 4, 2000, as supplemented March 8, 2001, March 27, April 26, May 14, May 18, June 4, June 11, June 26, June 29, July 3, July 16 (2 letters), July 17, August 17, and September 20, 2001.

Brief description of amendment: The license amendment revises the Harris Nuclear Plant Technical Specifications to support the replacement of the current Westinghouse Model D4 steam generators with Westinghouse Model Delta 75 replacement steam generators and revises the accident analyses to adopt the alternate source term (AST) methodology, using the guidance of Nuclear Regulatory Commission (NRC) Regulatory Guide 1.183.

Date of issuance: October 12, 2001.

Effective date: October 12, 2001.

Amendment No.: 107.

Facility Operating License No. NPF–63: Amendment revises the Technical Specifications.

*Date of initial notice in **Federal Register:*** For the steam generator replacement amendment request, the initial notice is dated November 1, 2000 (65 FR 65338). The March 8, 2001, March 27, April 26, May 14, May 18, June 4, June 11, June 26, June 29, July 3, July 16 (2 letters), and September 20, 2001, supplements contained clarifying information only, and did not change the initial no significant hazards consideration determination, or expand the scope of the initial application. The initial notice for the adoption of the AST methodology, using the guidance of NRC Regulatory Guide 1.183, was published on August 8, 2001 (66 FR 41612). The August 17, 2001, supplement contained clarifying information only, and did not change the initial no significant hazards

consideration determination, or expand the scope of the initial application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 12, 2001.

No significant hazards consideration comments received: No.

Entergy Nuclear Indian Point 2 and Entergy Nuclear Operations, Docket Nos. 50–003 and 50–247, Indian Point Nuclear Generating Unit Nos. 1 and 2, Westchester County, New York

Date of application for amendment: July 13, 2001.

Brief description of amendment: The amendments revise Technical Specification (TS) 4.1.8, ''High Radiation Area,'' for Indian Point Unit 1 and TS 6.12, ''High Radiation Area,'' for Indian Point Unit 2 to delete the administrative requirements for the control of access to high radiation areas. The control of access to these areas is assured by the licensee's radiation protection programs that comply with 10 CFR 20.1601 by using the alternate methods in NRC Regulatory Guide 8.38, ''Control of Access to High and Very High Radiation Areas in Nuclear Power Plants,'' June 1993.

Date of issuance: October 10, 2001.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 51 and 221.

Facility Operating License Nos. DPR–5 and DPR–26: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 5, 2001 (66 FR 46477).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 10, 2001.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Docket Nos. 50–003 and 50–247, Indian Point Nuclear Generating Unit Nos. 1 and 2, Westchester County, New York

Date of application for amendments: December 12, 2000, as supplemented on April 12, April 16, May 24, June 6, and June 8, 2001.

Brief description of amendments: The conforming amendments reflected the transfer of the licenses, formerly held by Consolidated Edison Company of New York, Inc., to Entergy Nuclear Indian Point 2, LLC, as the owner of Indian Point 1 and 2, and to Entergy Nuclear Operations, Inc., as the entity authorized to maintain Indian Point 1 and operate Indian Point 2. The amendments were approved pursuant to Section 50.90 of Title 10 of the Code of Federal Regulations.

Date of issuance: September 6, 2001.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 50 (Indian Point 1) and 220 (Indian Point 2).

Facility Operating License Nos. DPR–05 and DPR–26: Amendments revised the Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** January 29, 2001 (66 FR 8122).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 27, 2001.

No significant hazards consideration comments received: Not applicable.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: June 12, 2001, as supplemented by letters dated July 31, September 19 and September 25, 2001.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.8.1.1 to provide a one-time extension of the allowed outage time (AOT) for an inoperable emergency diesel generator (EDG) from three days to ten days. In addition, the amendment revised TS 3.4.4 to make the action associated with an inoperable emergency power supply to the pressurizer heaters consistent with the proposed EDG AOT.

Date of issuance: October 15, 2001.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 234.

Facility Operating License No. NPF–6: Amendment revised the TSs.

Date of initial notice in ***Federal Register:*** July 11, 2001 (66 FR 36341).

The July 31, September 19 and September 25, 2001, supplemental letters provided clarifying information and revised TSs that were within the scope of the original **Federal Register** notice and did not change the staff's initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 15, 2001.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: January 8, 2001.

Brief description of amendment: The change revises the lower limit of the allowable containment internal pressure in Technical Specification (TS) 3.6.1.4, ''Containment Systems—Internal Pressure,'' from 14.375 pounds per square inch, absolute (psia) to 14.275 psia.

Date of issuance: October 10, 2001.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 174.

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 21, 2001 (66 FR 11058).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 10, 2001.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, PSEG Nuclear LLC, and Atlantic City Electric Company, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York County, Pennsylvania

Date of application for amendments: October 10, 2000, as supplemented October 9, 2001.

Brief description of amendments: The amendments revised the licenses for Peach Bottom Units 2 and 3 to remove Atlantic City Electric Company as a licensee, in conjunction with the transfer of the minority ownership interests of Atlantic City Electric Company to the majority owners, Exelon Generation Company, LLC, and PSEG Nuclear LLC.

Date of issuance: October 18, 2001.

Effective date: As of date of issuance, and shall be implemented within 30 days of issuance.

Amendments Nos.: 241 and 245.

Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised the License.

Date of initial notice in ***Federal Register:*** November 27, 2000 (65 FR 70740).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 27, 2000.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: March 28, 2001, as supplemented July 19, and October 2, 2001.

Brief description of amendment: The amendment revised the Improved Technical Specifications 3.7.18, ''Control Complex Cooling System'' to allow a one-time increase in the completion time for restoring an inoperable Control Complex Cooling System train from 7 to 35 days.

Date of issuance: October 16, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 200.

Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 18, 2001 (66 FR 20006). The supplemental letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 16, 2001.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: February 21, 2000, as supplemented June 27, 2001.

Brief description of amendment: The amendments revise various administrative actions, requirements, and responsibilities contained in Improved Technical Specifications (ITS) 2.0, ''Safety Limits,'' and ITS 5.0, ''Administrative Controls,'' to reflect the recent CR–3 Nuclear Operations reorganization and the amended requirements of 10 CFR 50.72, 10 CFR 50.73 and 10 CFR 50.59.

Date of issuance: October 18, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 201.

Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 21, 2001 (66 FR 15926). The supplemental letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 20, 2001.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: April 17, 2001.

Brief description of amendments: Minor changes and corrections to a Unit 1 license condition and to Technical Specifications of both Unit 1 and 2 to correct administrative errors, or to incorporate changes justified by previous submittals, or to correct logic errors, or to delete obsolete terminology and provide conforming changes to reflect the revisions to 10 CFR 50.59.

Date of Issuance: October 18, 2001.

Effective Date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 177 and 119.

Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the Unit 1 Operating License and the Technical Specifications of both units.

Date of initial notice in ***Federal Register:*** May 30, 2001 (66 FR 29357).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 18, 2001.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: February 28, 2001.

Brief description of amendment: The amendment revises the technical specifications to reflect changes in the standard by which the licensee will test charcoal used in engineered safety feature systems. The requested changes satisfy the requirements of NRC Generic Letter 99–02.

Date of issuance: October 16, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 186.

Facility Operating License No. DPR–46: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 12, 2001 (66 FR 31710).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 16, 2001.

No significant hazards consideration comments received: No.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station Unit No. 2, Oswego County, New York

Date of application for amendment: February 27, 2001, as supplemented on September 6, 2001.

Brief description of amendment: The amendment revises surveillance requirements associated with Technical Specifications Section 3.3.8.2, ''Reactor Protection System (RPS) Electric Power Monitoring—Logic,'' and Section 3.3.8.3, ''Reactor Protection System (RPS) Electric Power Monitoring—Scram Solenoids.'' Specifically, the overvoltage allowable values and associated channel calibration frequency interval are changed.

Date of issuance: October 17, 2001.

Effective date: As of the date of issuance and shall be implemented by March 15, 2002.

Amendment No.: 99.

Facility Operating License No. NPF–69: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 21, 2001 (66 FR 15928).

The staff's related evaluation of the amendment is contained in a Safety Evaluation dated October 17, 2001.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of application for amendment: November 16, 2000.

Brief description of amendment: This amendment deleted a note in TS Surveillance Requirement 3.6.1.1.1 which extended the leak rate testing surveillance interval on the 2S299A and 2S299B spectacle flange o-rings until the Unit 2 10th refueling outage or a prior Unit 2 outage requiring entry into Mode 4. The note, added in Amendment No. 160 to Facility Operating License No. NPF–22 which was issued on May 8, 2000, was necessitated because of a Notice of Enforcement Discretion documented in a letter dated April 11, 2000. This note is no longer required to be included in TS 3.6.1.1.1 because the surveillance test was conducted during the Unit 2 forced outage in August of 2000.

Date of issuance: October 9, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 171.

Facility Operating License No. NPF–22: This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 11, 2001 (66 FR 36343).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 9, 2001.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: December 20, 1999, as supplemented on February 11, February 25, and October 10, 2000.

Brief description of amendment: The amendment revises the license to reflect changes related to the transfer of the license for the Hope Creek Generating Station, to the extent held by Atlantic City Electric Company to PSEG Nuclear LLC.

Date of issuance: October 18, 2001.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 135.

Facility Operating License No. NPF–57: This amendment revised the License.

Date of initial notice in ***Federal Register:*** February 18, 2000 (65 FR 8453).

The letters dated February 11, February 25, and October 10, 2000, provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 21, 2000.

No significant hazards consideration comments received: No.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: December 20, 1999, as supplemented February 11, February 25, and October 10, 2000.

Brief description of amendments: The amendments revised Facility Operating Licenses DPR–70 and DPR–75 to reflect changes related to the transfer of the license for the Salem Nuclear Generating Station, Unit Nos. 1 and 2, to the extent held by the Atlantic City Electric Company, to PSEG Nuclear Limited Liability Company.

Date of issuance: October 18, 2001.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment Nos.: 246 and 227.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the License.

Date of initial notice in ***Federal Register:*** February 18, 2000 (65 FR 8452). The February 11, February 25, and October 10, 2000, supplements did not expand the scope of the original application with respect to both the proposed transfer action and the proposed amendment action as initially noticed in the **Federal Register**. *No hearing requests or comments were received.* In addition, the submittals did not affect the applicability of the Commission's generic no significant hazards consideration determination set forth in 10 CFR 2.1315.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 21, 2000.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia

Date of application for amendment: May 23, 2001.

Brief description of amendments: The amendment revises the Safety Limit Minimum Critical Power Ratio to reflect the results of a cycle-specific calculation that was performed using NRC-approved methodology.

Date of issuance: October 12, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 167.

Facility Operating License No. NPF–5: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** June 12, 2001 (66 FR 31714).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 12, 2001.

No significant hazards consideration comments received: No.

TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: April 25, 2001, as supplemented by letters dated July 31 and August 23, 2001.

Brief description of amendments: The amendments change the Technical Specifications (TS) to allow a one-time only change to TS 3.8.1, ''AC Sources—Operating,'' Action A.3, by extending the required Completion Time for restoration of an inoperable offsite circuit from 72 hours to 21 days.

Date of issuance: October 9, 2001.

Effective date: As of the date of issuance and shall be implemented no later than February 28, 2002.

Amendment Nos.: 88/88.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 5, 2001 (66 FR 46482).

The supplemental letter dated August 23, 2001, provided clarifying information that did not change the Nuclear Regulatory Commission (the Commission) staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 9, 2001.

No significant hazards consideration comments received: No.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: August 14, 2001, as supplemented on August 21, 2001.

Brief description of amendment: The proposed amendment would extend the allowed outage time (AOT) for the High Pressure Coolant Injection (HPCI) and Reactor Core Isolation Cooling systems from 7 days to 14 days. Requirements were added to immediately ensure the availability of alternate means of high pressure coolant makeup. Also, clarifying changes were made to Technical Specifications (TSs) 3.5.E.2 and 3.5.G.2 by reformatting the TSs to make the nomenclature consistent regarding HPCI and the Automatic Depressurization System as being systems, not subsystems.

Date of Issuance: October 18, 2001.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 205.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 18, 2001 (66 FR 48152).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 18, 2001.

No significant hazards consideration comments received: No.

Note: The publication date for this notice will change from every other Wednesday to every other Tuesday, effective January 8, 2002. The notice will contain the same information and will continue to be published biweekly.

Dated at Rockville, Maryland, this 22nd day of October 2001.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–27261 Filed 10–30–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44972; File No. SR–Amex–2001–19]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment Nos. 1, 2 and 3 by the American Stock Exchange LLC Relating to Its Performance Evaluation and Allocations Procedures

October 23, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 19, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On May 31, 2001, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] On August 13, 2001, the Exchange submitted Amendment No. 2 to the proposed rule change.[4] On August 27, 2001, the Exchange submitted Amendment No. 3 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Amex Rules 26 and 27 to codify the Exchange's performance evaluation and allocations procedures. The text of the proposed rule change is available at the Office of the Secretary, the Amex and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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 Board of Governors of the Exchange is generally responsible for the supervision of its members. With regards to (1) evaluating the performance of specialists, registered traders, and brokers, and (2) allocating securities to specialists, the Board has delegated its responsibilities to the Committee on Floor Member Performance (the ''Performance Committee'' or ''Committee'') and the Allocations Committee, respectively.[6]

Performance evaluation is the non-disciplinary process[7] by which the Exchange reviews Floor member conduct and takes remedial action where necessary to improve performance. The registration of specialists (''allocations'') is the process by which the Exchange matches appropriate specialists to particular securities.

The Exchange proposes to codify its performance evaluation and allocation procedures as Amex Rules 26 and 27 in order to make them readily available to members since these procedures currently are not available in one easily accessed location.

Performance Evaluation (Rule 26)

Paragraph (a) of proposed Rule 26 describes the composition of the Performance Committee. The proposed rule states that the Performance Committee consists of 16 persons drawn from a larger pool divided as equally as possible among specialists, registered traders, brokers and upstairs member firm representatives. Specialists, registered traders, and brokers are the three classes of market participants on the Exchange Floor. Upstairs member firm representatives, while not on the Floor, make extensive use of the Exchange's services and have another perspective on the operation of the market. A Floor Governor chairs meetings of the Performance Committee and only may vote to break a tie. A

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Bill Floyd-Jones, Jr., Assistant General Counsel, Legal and Regulatory, Amex, to Katherine A. England, Assistant Director, Division Market Regulation (''Division''), Commission (May 31, 2001). Amendment No. 1 adds discussion to the purpose section of the proposal regarding the ability of the Performance Committee to take appropriate action should a member or member organization fail without a reasonable excuse to meet with the committee after receiving notice. In addition, Amendment No. 1 corrects structural and typographical errors that appeared in the proposed rule language.

[4] *See* Letter from Bill Floyd-Jones, Jr., Assistant General Counsel, Legal and Regulatory, Amex, to Katherine A. England, Assistant Director, Division, Commission (August 10, 2001). Amendment No. 2 adds a reference to the Special Allocations Committee in the proposal and proposed rule text; adds allocations procedures for structured products and Exchange Traded Funds; and makes technical changes to the proposed rule text.

[5] *See* Letter from Bill Floyd-Jones, Jr., Assistant General Counsel, Legal and Regulatory, Amex, to Katherine A. England, Assistant Director, Division, Commission (August 24, 2001). Amendment No. 3 clarifies the Performance and Allocations Committee review procedures.

[6] *See* Amex Rules 170 and 958, which establish standards for specialists and Registered Options Traders. *See also* Article II, Section 3 of the Exchange Constitution, which provides in relevant part:

The Board shall establish standards and requirements for the registration of specialists or odd-lot dealers in securities dealt in on the Exchange, and may grant to a committee or committees, the authority to (i) approve the registration of specialists or odd-lot dealers, (ii) revoke or suspend any such registration at any time, (iii) allocate to a registered specialist or odd-lot dealer any security dealt in on the Exchange, and (iv) revoke any such allocation, temporarily or permanently, at any time.

[7] *See In the Matter of the Application of Pacific Stock Exchange's Options Floor Post X–17,* Admin. Proc. File No. 3–7285, Securities Exchange Act Release No. 31666 (December 29, 1992), 51 SEC DOC 261. The Commission determined that performance evaluation processes fulfill a combination of business and regulatory interests at exchanges and are not disciplinary in nature. The Commission states in the *Post X–17* case:

We believe that the reallocation of a market maker's (or a specialist's) security due to poor performance is neither an action responding to a violation of an exchange rule nor an action where a sanction is sought or intended. Instead, we believe that performance-based security reallocations are instituted by exchanges to improve market maker performance and to ensure quality of markets. Accordingly, in approving rules for performance-based reallocations, we historically have taken the position that the reallocation of a specialist's or a market maker's security due to inadequate performance does not constitute a disciplinary sanction.

We believe that an SRO's need to evaluate market maker and specialist performance arises from both business and regulatory interests in ensuring adequate market making performance by its market makers and specialists that are distinct from the SRO's enforcement interests in disciplining members who violate SRO or Commission Rules. An exchange has an obligation to ensure that its market makers or specialists are contributing to the maintenance of fair and orderly markets in its securities. In addition, an exchange has an interest in ensuring that the services provided by its members attract buyers and sellers to the exchange. To effectuate both purposes, an SRO needs to be able to evaluate the performance of its market makers or specialists and transfer securities from poor performing units to the better performing units. This type of action is very different from a disciplinary proceeding where a sanction is meted out to remedy a specific rule violation. (Footnotes omitted.)

Senior Floor Official may chair the Committee in the event that a Floor Governor is unavailable.

Paragraph (a) of the proposed Rule 26 also allows the Performance Committee to delegate some or all its responsibilities to one or more subcommittees consisting of six persons. Due to the large size of the Performance Committee, the Exchange believes that it is impractical to convene the full Committee for all matters that might come before it. As a result, it is the practice of the Performance Committee to use subcommittees to (1) screen matters to determine if they warrant the attention of the full Committee, and (2) resolve routine matters (*e.g.,* adherence to zone performance standards). A Performance subcommittee would have less substantial remedial tools available to it than are available to the Performance Committee due to its limited size. The remedial actions available to Performance subcommittees are enumerated in paragraph (a) of proposed Rule 26.

Paragraphs (b) through (d) of proposed Rule 26 describe the responsibilities of the Performance Committee with respect to specialist, registered traders, and brokers. These paragraphs also enumerate the remedial actions available to the Committee with respect to each group of Floor members.

With respect to specialists, paragraph (b) of proposed Rule 26 would provide that the Performance Committee reviews proposed transfers to specialist registrations and specified transactions involving specialists. Paragraph (b) provides that the Performance Committee will approve a proposed transaction unless a ''countervailing institutional interest'' indicates that the transaction should be disapproved or conditionally approved. In determining the presence of a countervailing institutional interest, the Performance Committee would consider whether the proposed transaction would maintain or enhance the quality of the Exchange's markets. The Performance Committee also would consider whether the transaction would create a level of concentration among specialists that should be mitigated. Commentary .03 to proposed rule 26 describes the Exchange's ''concentration'' policy.

The Exchange proposes that the Performance Committee disapprove or conditionally approve a transaction if it appears to the Committee that the proposed transaction (1) would not maintain, or (2) would not enhance the quality of markets on the Exchange. The Committee also may disapprove or conditionally approve a transaction if it appears to the Committee that it would raise concentration issues. This review authority gives the Performance Committee an important means for ensuring that specialists maintain quality markets on the Exchange and thus benefits investors.

In addition to reviewing transactions of specialists, the Performance Committee would review specialist performance relative to the quality of markets, competition with other markets, observance of ethical standards, and administrative factors. The Exchange believes that the Performance Committee of the Amex and its analogues at other principal equity and options exchanges traditionally have used these factors to review specialists performance to ensure the maintenance of quality markets. If the Performance Committee determines that a specialist has failed to properly perform as a specialist, the Exchange proposes that the Committee may take one or more of the 10 remedial actions enumerated in Paragraph (b) of proposed Rule 26. These range from relatively mild actions such as counseling the specialists on how to improve its performance or issuing an admonitory letter, to more intermediate actions such as assigning a performance rating [8] or requiring the adoption of a Performance Improvement Plan,[9] to stronger actions such as directing the reallocation of one or more securities.

The four types of securities that currently trade on the Amex are (1) stock and other equities, (2) structured products, (3) standardized options, and (4) Exchange Traded Funds (''ETFs'').[10] Specializing or market making in these securities requires different resources, and firms or units that specialize in more than one security class customarily are staffed and managed along product line. As a result, poor performance by a specialist unit in listed equities might not be mirrored by poor performance by the same unit in listed options. Therefore, the Performance Committee would have the authority to target remedial action to a particular class of security traded by a specialist or registered trader.

Paragraph (c) of proposed Rule 26 describes the responsibilities and authority of the Performance Committee with respect to registered traders. It is quite similar to paragraph (b) of proposed Rule 26 (which concerns specialists) in recognition of the fact that the Registered Options Traders (''ROTs'') are ''quasi-specialists.'' [11] Since the Exchange does not ''allocate'' securities to registered traders, however, there is no provision for reallocations or allocation preclusions with respect to registered traders.

Commentary .01 to proposed Rule 26 provides that an Auto-Ex [12] performance standard applicable to ROTs is monitored by the Performance Committee. The standard provides that any ROT that trades an option during a break-out situation and has signed-on to Auto-Ex for a period of two or more days over the ten previous business days must sign on to Auto-Ex for the break-out option. LEAPS are excluded from this standard. The proposed standard further provides that all ROTs that sign on to Auto-Ex for the break-out must remain on Auto-Ex for the duration of the break-out. ROTs that have signed-on to Auto-Ex during a break-out only are permitted to sign-off with the permission of a Floor Governor. The purpose of the standard is to ensure that there is sufficient liquidity for an option during times of market stress. The Performance Committee may prohibit a ROT, or his or her firm, from participating on Auto-Ex for up to six months for deviations from this standard.

Paragraph (d) of proposed Rule 26 describes the responsibilities and authority of the Performance Committee with respect to Floor Brokers. Since brokers do not act as dealers, they are not evaluated in terms of quality or markets and competition with other markets. Instead, they are evaluated with respect to order handling, observance of ethical standards, and administrative factors. In addition, the remedial actions that the Performance Committee may take with respect to brokers are more limited than those that may be taken with respect to registered

[8] *See* Securities Exchange Act Release No. 27455 (Nov. 22, 1989), 54 FR 49152 (Nov. 29, 1989) (approving File No. SR–Amex–83–27, regarding the Exchange's ''rating'' system).

[9] Commentary .02 to proposed Rule 26 describes Performance Improvement Plans and the procedure for implementing them. In general, the Performance Improvement Plan procedure permits the Performance Committee to require specialists and registered traders to implement business plans to improve their performance.

[10] ETFs include, but are not limited to, Portfolio Depositary Receipts (*e.g.,* SPDRs, DIAMONDS and Nasdaq-100 Index Tracking Stock), Index Fund Shares (*e.g.,* Select Sector SPDRs and iShares) and Trust Issued Receipts (*e.g.,* ''HOLDRs''). The Exchange also lists corporate and government bonds.

[11] *See* Commentary .01 to Amex rule 958. Unlike a specialist, however, a ROT may not handle agency orders. *See also* Amex Rules 111(c) and 950(c).

[12] Auto-Ex is the Exchange system that provides an automatic execution to incoming customer orders up to a specific size. Specialists and ROTs that sign on to the system take the opposite side of incoming customer orders at the displayed bid or offer except when a limit order on the book establishes the best bid or offer on the Amex.

traders and specialists because many of the Committee's remedial measures involve restrictions on acting as a dealer, which is not a broker's function.

Paragraph (e) of proposed rule 26 describes Performance Committee procedures. Paragraph (e) of proposed rule 26 provides that persons (*i.e.,* specialists, specialist units, registered traders or brokers) that are asked to address the Performance Committee because they may have failed to meet minimum performance standards are notified in writing of the matter(s) to be considered by the Committee and are provided with copies of any written materials that are given to the Committee prior to the meeting. Such persons may be questioned by the Performance Committee members and Exchange staff present at the meeting, and they have an opportunity to present information and documents to rebut any concerns about their performance. Anyone appearing before the Committee (not just persons that may have failed to meet appropriate performance standards) may be represented by counsel. Formal rules of evidence do not apply at meetings of the Performance Committee. If the Performance Committee determines that a member or member organization has failed to meet minimum performance standards, the affected person or persons would be notified in writing of the Committee's findings, conclusions, and the remedial action to be taken.

Paragraph (f) of proposed Rule 26 provides that the Performance Committee may take action against a member or member organization if the person or firm fails without reasonable excuse to meet with the Committee after receiving notice of the meeting.

Paragraphs (g) and (h) of proposed Rule 26 describe procedures for appealing decisions of the Performance Committee. Members and member organizations aggrieved by determinations of the Performance Committee or a Performance subcommittee must submit an application to review the decisions to the Secretary of the Exchange within five business days of receipt of the Committee's or subcommittee's written decision. Filing a timely application for review stays the decisions of the Performance Committee or subcommittee. Appeals from decisions of a Performance subcommittee are reviewed ''de-novo'' by the Performance Committee. Appeals from decisions of the Performance Committee are reviewed by the Amex Adjudicatory Council (''Adjudicatory Council''). The Exchange represents that the Adjudicatory Council may (1) Limit its review to the record created by the Performance Committee, (2) consider additional matters that were not included in the record, or (3) hear the matter ''de novo,'' as the Adjudicatory Council determines is appropriate to render a fair decision on the appeal. A verbatim record of the proceeding before the Adjudicatory Council is maintained and the Adjudicatory Council's decision is in writing. The decision of the Adjudicatory Council constitutes final action by the Exchange.

Allocations Procedures (Rule 27)

Paragraph (a) of proposed Rule 27 describes the composition and responsibilities of the Options and Equities Allocations Committees. The Options Allocations Committee is responsible for allocating standardized equity options. This Committee consists of 11 persons as follows: Six Floor brokers, two Registered Options Traders, and three representatives of upstairs member firms. The Equities Allocations Committee allocates the equity securities of operating companies. It consists of ten persons as follows: Six Floor brokers, one specialist, and three representatives of upstairs member firms. A Floor Governor, who only may vote to break a tie, chairs both Committees. A Senior Floor Official may chair a meeting in the event that a Floor Governor is unavailable.

The Special Allocations Committee allocates securities that are not allocated by the Options or Equities Allocations Committees and securities with special characteristics as may be determined by the Chief Executive Officer of the Exchange or his or her designee. It consists of six persons as follows: The Chief Executive Officer (or his or her designee), two brokers, two Registered Options Traders, and a representative of an upstairs member firm. The Special Allocations Committee is chaired by the Chief Executive Officer who does not vote except to make or break a tie. In the Chief Executive Officer's absence, a Floor Governor or Senior Floor Official may chair the Committee. The Options, Equities and Special Allocations Committees are collectively referred to herein as the ''Allocations Committee.''

Floor brokers have the greatest number of representatives on the Allocations Committee since they tend to have personal familiarity with all units on the Floor as a result of their representation of orders at different posts. Specialists have the fewest representatives on the Allocations Committee since they typically have limited personal familiarity with other units. In addition, specialists and the units that they are associated with are ineligible to be allocated any security that is allocated at a meeting where they participate on the Committee. As a result, specialists frequently decline to participate at Allocations Committee meetings. Representatives of upstairs member firms have an intermediate number of representatives on the Committee (as do ROTs with respect to the Options Allocations Committee). Upstairs member firms, like brokers, are users of the services provided by specialists and have valuable insights as to their relative competencies. ROTs, as market makers, also have insights into the qualifications of different specialists. The Chief Executive Officer is a member of the Special Allocations Committee as a result of the role played by the Exchange's staff in securing listings of the securities that are allocated by the Special Allocations Committee (*e.g.,* ETFs).

Paragraph (b) of proposed Rule 27 provides that the Allocations Committee shall select the specialist or unit for a security that appears best able in the professional judgment of the Committee members to perform the functions of a specialist in the security to be allocated. The proposed rule also provides a non-exclusive list of the criteria that the Allocations Committee uses to decide which unit should be allocated a particular security. The Exchange, the New York Stock Exchange, Inc., and Chicago Board Options Exchange, Inc. customarily use these criteria to ensure that securities are allocated consistent with the interests of investors and the Exchange. Issuers of equity securities may elect to use the Exchange's ''Issuer Choice'' procedures to allocate a security [13] if they so desire, pursuant to paragraph (e) of proposed Rule 27 and Commentary .05 of proposed Rule 27.

Paragraph (b) of proposed Rule 27 also provides that specialists subject to a preclusion on new allocations in one or more classes of a security as a result of Performance Committee or a disciplinary action only are eligible for allocations of ''related securities '' as described in proposed Commentary .05 to Rule 27.

With respect to equity securities, proposed Commentary .05 to Rule 27 provides that newly listed convertible securities and securities issued in connection with a name change or reverse stock split are automatically allocated (*i.e.,* allocated without any involvement of the Allocations

[13] *See* Securities Exchange Act Release No. 23593 (Sept. 5, 1986), 51 FR 32985 (Sept. 17, 1986) (order approving File No. SR–Amex–86–10, regarding the Issuer Choice program).

Committee) to the specialist that already trades the issuer's securities regardless of an allocation preclusion. In other situations involving the allocation for equity securities that are related securities, proposed Commentary .05 provides that the Allocations Committee would determine whether the trading characteristics of the newly listed related security are closely related to the exiting security given the Exchange staff's recommendations as to whether the newly listed related securities should be allocated to the current specialist. If the Allocations Committee determines that the trading characteristics of the newly listed related security are closely related to the existing listed security, it would allocate the newly listed security to the existing regardless of an allocation preclusion. If the Allocations Committee determines that the trading characteristics of the newly listed related security are not closely related to the existing security, the related security is allocated either by the Allocations Committee (paragraph (b) of proposed Rule 27) or according to the Issuer Choice procedure (paragraph (e) of proposed Rule 27). The existing specialist, if subject to an allocation preclusion, is eligible for the newly listed related security only if the issuer requests its current specialist under the Issuer Choice procedure.

With respect to the standardized options, proposed Commentary .05 provides that options on related securities are automatically allocated to the existing option specialist unless the existing options specialist is subject to an allocation preclusion. If the existing option specialist is subject to a preclusion on new option allocations, the specialist only will be allocated the new option if the Allocations Committee determines that the trading characteristics of the newly listed option are closely related to the existing option, given the Exchange's recommendation as to whether the newly listed related securities should be allocated to the current specialist. Unless the Allocations Committee makes the required determination, the existing specialist that is subject to an allocation preclusion is ineligible for the newly listed option on the related security.

Commentary .05 states that the term ''related security'' does not include ETF's. Thus, an ETF specialist that is subject to a preclusion on the allocation of ETCs is not eligible for any new ETF allocations for the duration of the preclusion.

Paragraph (e) of proposed Rule 27 describes the Exchange's ''Issuer Choice'' program, and should be read in conjunction with Commentary .02 and .03 to proposed Rule 27, ''Contacts with Unlisted Companies,'' and ''Specialist and other Member Contacts with Issuers and Sponsors of Exchange Traded Funds and Structured Products for the Purpose of Securing New Listings.'' Commentary .02 to proposed Rule 27 provides that specialists or other members are required to submit a Notice of Marketing Interest (''NOMI'') to the Exchange (1) prior to initiating any contact with an unlisted company regarding listing, or (2) within five business days of an unanticipated contact with a company where discussions regarding listing occurred or are anticipated in the future. There is an automatic 12-month sunset on the authorization of a specialist unit or other member to effect the listing of prospect company on the Exchange. This sunset period may be extended for one additional six-month period by Amex staff if the specialist or other member submits a written request to Amex staff detailing the activities that the specialist or other member has undertaken which it believes will result in a favorable listing decision. Once a company decides to list on the Exchange, specialists and other members can have no further communications with the company for the purpose of influencing the choice of specialist except for the interview described below.

Commentary .03 to Rule 27 provides that the Exchange must approved proposed contacts between specialists and potential issuers and sponsors of ETFs and Structured Products regarding potential new listings. The Exchange would approve the contact where it appears that the contact would benefit the Exchange's listing effort. The Exchange would disapprove the contact where it might hinder the listing effort or would be inappropriate. The approval would last for six months and could be extended for one or more six-month period where it appears that the specialist is making progress in securing the listing. The Exchange also could withdraw the approval prior to scheduled termination if it appears that the specialist contacts are hindering the Exchange's listing efforts.

Paragraph (e) of proposed Rule 27 provides that the Allocations Committee prepares a list of six qualified units based upon the criteria used by the Allocations Committee in selecting a specialist under its regular allocations process. The issuer or sponsor (in the case of an ETF) may request that a unit or units be placed on the list of eligible specialist. The Allocations Committee, however, is not obligated to honor such requests. In the case of an equity security, the Allocations Committee only is advised of a company's preference for a particular specialist where the specialist's efforts actually have been instrumental in securing the listing as evidenced by the company filing a preference with the Exchange for the specialist within two weeks of the Exchange initiating a listing qualification review.

Pursuant to proposed Rule 27, issuers may interview specialists on the list of eligible units prepared by the Allocations Committee. Exchange staff would arrange these interviews, and in the case of an equity security, the Chief Executive Officer of the Exchange or his or her designee may require a member of the Exchange staff to attend such interviews to answer questions about the Exchange's allocation policies and to ensure that any statements by specialists and their representatives are consistent with the Exchange's policies on communications with unlisted companies. Inappropriate statements to issuers and ETF sponsors include, but are not limited to, apparent misrepresentations as to market making capabilities or promises unrelated to the specialist's role in making a market in the issuer's stock. Specialists and their representatives also may not supply information concerning another specialist unit or units either orally or in writing, except they may refer to overall floor-wide statistics.

Under proposed Rule 27, the issuer selects its specialist from the list of eligible units provided to it. In addition, if an issuer becomes dissatisfied with its specialist, it has a one-time right to request the reallocation of its securities. This right may be exercised at any time between 120 days and one year of listing. In the event that the issuer requests a reallocation under this provision, its securities may be reallocated either under the Exchange's Issuer Choice or regular allocations procedures.

Paragraph (c) of proposed Rule 27 provides miscellaneous procedures that apply to both the regular and Issuer Choice allocation process. Paragraph (c) of proposed Rule 27 also provides that all eligible specialists are automatically deemed to apply for all new listings. In contrast, options specialists must submit an application to be considered for a new allocation of options. In addition, the Exchange proposes to require that specialists disclose any business transactions (*e.g.,* agreements) or other relationships (*e.g.,* ownership of stock or other securities) that a specialist, its affiliates, and the employees of both the specialist and its

affiliates have with a newly listed company, its affiliates and the employees of the company and its affiliates. Specialists also would be required to confirm to the Exchange in writing the absence of any disclosable business transactions or relationships if there are none.

Paragraph (c) of proposed Rule 27 provides that specialists may present relevant information to the Allocations Committee for its consideration in connection with specific allocation decisions. The Allocations Committee would have discretion to permit members of a trading crowd to present relevant information to the Allocations Committee in appropriate circumstances. Information presented to the Allocations Committee could include, for example, undertakings as to the size of the markets and quote spreads that the Specialist and crowd would maintain, and other information relevant to the factors that the Allocations Committee may consider in making its decisions. The Allocations Committee may require that all submissions be in writing.

Paragraph (d) of proposed Rule 27 describes the ''Pre-Allocation'' or ''Piggy-Back'' allocation process. This procedure is used in situations where the Exchange decides to ''piggy-back'' a listing announced by another exchange (*i.e.,* the Amex determines to list an option following its designation by another exchange). Due to the delay attendant to the regular allocation process and the short time prior to the commencement of trading in ''piggy-back'' situations, pre-selected units identified by the Allocations Committee as the Exchange's premier units are allocated ''piggy-back'' options on a rotating basis.

Twice a year, the entire Allocations Committee pool meets to interview and review applications from all specialists that wish to be placed on the pre-allocation list. Following this review process, the Allocations Committee prepares a list of the selected units in such order of priority as the Allocations Committee designates based on the criteria enumerated in paragraph (b) of proposed Rule 27.

When the Exchange determines to list an option in response to its listing by another exchange, the Exchange proposes that the Exchange staff may contact available Floor Governors to confirm that no material performance situation or other relevant matter has developed that would cause the next unit on the list to be inappropriate to receive the allocation. If such a situation has developed, the Exchange proposes that specialists or specialist units would be by-passed and the Allocations Committee would be convened as soon as possible to determine if the specialist or specialist unit should be removed from the pre-allocation list.

Paragraphs (f), (g), and (h) of proposed Rule 27 address the role of the Allocations Committee in the reallocation of securities. Paragraph (f) of proposed Rule 27 provides that the Allocations Committee follows its regular allocation procedures (not Issuer Choice) in the event that the Exchange reallocates securities because of, among other things, (1) A Performance Committee remedial action, (2) a specialist request to be relieved of a security for good cause, or (3) the registration of a specialist which is cancelled as a result of a disciplinary action. Paragraph (f) of proposed Rule 27 also provides that the procedures specified in paragraphs (g) and (h) of proposed Rule 27 shall apply to reallocations made in connection with the emergency reallocations due to financial or operating conditions or to reallocations because of business transactions that result in a transfer of one or more specialist registration.

As previously noted by the Exchange, the Performance Committee is responsible for reviewing proposed transfers of specialist registrations and specified transactions involving specialists including the dissolution of specialist units. Since the Performance Committee is primarily responsible for reviewing such matters, paragraph (g) of proposed Rule 26 provides that the Allocations Committee shall follow directions received from the Performance Committee with respect to the reallocation of securities in these matters. If the Performance Committee directs that there should be some other disposition of the securities than provided for by the parties, but does not give the Allocations Committee specific instructions as to how the securities should be allocated, the Allocations Committed would follow its customary (*i.e.,* no Issuer Choice) procedures in reallocating these securities. Paragraph (g) of proposed Rule 27 further provides that the Exchange will defer to the decision of the arbitrators in the event of an arbitration between specialists unless the Performance Committee determines that a countervailing institutional interest dictates that the Exchange either should not wait for and/or abide by the decision of the arbitrators. In such cases, the Performance Committee may direct the Allocations Committee to reallocate the disputed securities in a specified manner. In the absence of specific instructions from the Performance Committee, the Allocations Committee reallocates the securities in accordance with its customary (no Issuer Choice) procedures.

Paragraph (h) of proposed Rule 27 addresses emergency reallocations for reasons of financial or operating condition. It provides that the Chief Executive Officer of the Exchange or the Senor Supervisory Officer on the Trading Floor, in consultation with the available Floor Governors, may request the Allocations Committee to convene to reallocate securities on an emergency basis where it appears that a unit cannot be permitted to continue to specialize in one or more of its securities with safety to investors, its creditors, or other members due to financial or operational conditions. The affected specialist would be notified of the meeting (the notice does not have to be in writing) and, if time and circumstances permit, the specialist will be given an opportunity to appear before the Allocations Committee. If a prior hearing is not feasible, however, the Exchange proposes that the Allocations Committee may proceed with the reallocation, and the specialist unit shall be afforded an opportunity to address the Committee as soon as reasonably possible after the reallocation. If the conditions which led to the reallocation no longer exist or are corrected, the Chief Executive Officer in consultation with the available Floor Governors, or the specialist unit may request the Allocations Committee to reconvene to consider whether the securities should be restored to the unit.

Paragraph (i) of proposed Rule 27 provides for the appeal of decisions of the Allocations Committee to the Amex Adjudicatory Council. A written application to appeal a decision must be filed with the Office of the Secretary within five business days of the decision of the Committee. An application to review the Allocations Committee's decision, however, does not stay the decision. Unless the Adjudicatory Council decides otherwise, the review of Allocations Committee decisions is limited to matters raised before the Committee. A verbatim record of the proceeding before the Adjudicatory Council is maintained and the Council's decision is in writing. The decision of the Adjudicatory Council is final and may not be appealed.

2. Statutory Basis

Proposed Rules 26 and 27 are consistent with section 6(b) of the Act [14] in general, and further the objectives of

[14] 15 U.S.C. 78f(b).

section 6(b)(5) of the Act [15] in particular, in that the Exchange's procedures are designed to promote just and equitable principles of trade and protect investors and the public interest by encouraging good performance and competition among specialists and other Floor members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that proposed Rules 26 and 27 will impose no burden on competition; rather, the proposed rules will enhance and encourage competition both within the Exchange, and, more significantly, between and among the Exchange and other exchanges and markets by establishing incentives for superior performance and thereby ensuring the maintenance of quality markets at the Exchange. In this respect, the Exchange believes that it is critical to recognize that the most important level of competition occurs not among specialists of the same exchange to obtain a particular listing (although this, too, is important), rather among specialists of different exchanges trading in the same security and actively competing for the business of the investing public.[16]

Moreover, the Exchange believes that the Commission has expressly recognized the types of procedures as are set forth in Rules 26 and 27 for allocating securities to the most suitable specialists, reviewing the performance of specialists and other Floor members, and, if applicable, reallocating securities, are necessary to ensure quality markets and thereby attract buyers and sellers to the Exchange.[17]

The Exchange did not solicit comments on this proposal and, therefore, did not receive written comments directly on proposed Rules 26 and 27. However, criticism was expressed to the Exchange during internal meetings to review these rules regarding the practice of payment for order flow in options and its alleged impact upon a specialist's market share, combined with the concomitant use of market share as a criterion for measuring performance by options specialists. The criticism expressed was that payment for order flow skews a specialist's market share in ways having little or nothing to do with the quality of the market provided by the specialist.

Because the Exchange believes that the Commission has previously considered the practice of payment for order flow, it will not address the advantages or disadvantages of payment for order flow at this time.[18] Nevertheless, the Exchange acknowledges that payment for order flow can in some circumstances be one of many factors capable of affecting a specialist's market share in an option. The Exchange believes that payment for order flow, however, is never the sole determining factor of market share. Furthermore, the Exchange believes that, as in any free and competitive market, a loss of market share is a warning signal that the customer, in this case the investor, views the market as inferior in some respect to a competitor's market. According to the Exchange, to ignore the diminishment of market share would be tantamount to a declaration of non-competition (*i.e.,* it would ignore the fact that the investing public views another market or exchange as superior or more competitive). In such circumstances, the Exchange believes that the only responsible course is to investigate and weigh the reasons for the loss of market share to competitive markets and exchanges.

The Exchange notes that the Performance Committee may in its evaluation determine that the loss of market share occurred through no fault of the specialist involved, and the security would not be reassigned. In any event, the Exchange believes that market share is one of a number of appropriate factors for the Performance Committee to weigh in evaluating performance by specialists, including options specialists, and that inclusion of this criterion promotes competition among market makers and among markets. The Exchange believes that the failure to include loss of market share as one possible indicator of poor performance could leave the Exchange unable to prevent the erosion of a viable market in a security, which would reduce or eliminate competition with respect to that security.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

As set forth above in Item II(B), there were no written comments received by the Exchange directly in response to proposed Rules 26 and 27.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2001–19 and should be submitted by November 21, 2001.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27326 Filed 10–30–01; 8:45 am]

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[15] 15 U.S.C. 78f(b)(5).

[16] The Exchange represents that much of the new proposed rules are merely codifications of existing practices and procedures, and thus do not reflect any fundamental changes with respect to the allocation of securities to specialists or the evaluation of the performance of specialists and other Floor members.

[17] *See* note 5, *supra.*

[18] The Exchange notes that on July 20, 2000, the Exchange filed a proposed rule change establishing a marketing fee for equity option transactions of specialists and registered options traders used to attract order flow, which became effective upon filing with the Commission. The Exchange further notes that, after soliciting comments, the Commission allowed the rule to remain in effect. *See* Securities Exchange Act Release No. 43228 (Aug. 30, 2000), 65 FR 54330 (Sept. 7, 2000).

[19] 17 CFR 200.30–2(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44974; File No. SR–Amex–2001–67]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change of the American Stock Exchange LLC to Codify Current Audit Trail and Trade Comparison Requirements and To Make Other Technical Amendments to the Exchange's Audit Trail Rules

October 24, 2001.

On August 28, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposal to codify certain audit trail and trade comparison requirements and to make other technical amendments to the Exchange's audit trial rules. On Septemberr 21, 2001, the Commission published the proposed rule change in the **Federal Register**.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, and dealers.[5] The proposed clarifications to the Amex's audit trail rules previously were set forth in the Exchange's information circulars, but were not codified in the Exchange's rules. The Commission believes that these provisions are reasonably designed to improve the Exchange's audit trail, and that codifying them will make the Exchange's rules more transparent to its members and other market participants.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–Amex–2001–67) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27328 Filed 10–30–01; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44807 (September 17, 2001), 66 FR 48727.

[4] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release 34–44946A; File No. GSCC–2001–01]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to the Redesign of Comparison Rules

October 25, 2001.

Correction

In FR Document No. 01–26727, beginning on page 53816, in the issue of Wednesday, October 24, 2001, the first sentence of the first paragraph in the middle column on page 53817 should read as follows: ''In the current environment, most trades are compared within the GSCC system as a result of bilateral comparison, the exception being certain lock-in trades, such as members' Federal Reserve auction purchases.''

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27363 Filed 10–30–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44975; File No. SR–NYSE–2001–17]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the New York Stock Exchange, Inc. to Amend the Exchange's Allocation Policy and Procedures

October 24, 2001.

On July 3, 2001, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's Allocation Policy and Procedures to allow a listing company to send a separate letter to the Allocation Committee indicating the role that one specialist unit has played in helping the company to reach its listing decision. Such specialist unit would then be included in the pool of potential specialist units that would be interviewed by the listing company. Notice of the proposed rule change appeared in the **Federal Register** on August 17, 2001.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] Specifically, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act, which requires among other things, that the rules of an exchange promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interests.[5] The Commission bases its findings on representations by the NYSE that the Exchange's Allocation Policy and Procedures would continue to carefully restrict communications between specialists and issuers, and that the fairness of the allocation process would not be compromised

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–NYSE–2001–17) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27327 Filed 10–30–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44676 (August 9, 2001), 66 FR 43281.

[4] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–9188]

Proposed Decommissioning and/or Excessing of the Remaining 180-foot Seagoing Buoy Tender Class, and the Proposed Excessing of the Vessel, FIR (WLM 212)

AGENCY: U.S. Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The U.S. Coast Guard announces the availability of the final Programmatic Environmental Assessment and the Finding of No Significant Impact on its proposal to decommission and/or declare excess the remaining vessels in the 180-foot seagoing buoy tender fleet and the proposed excessing of the former United States Coast Guard Cutter, FIR (WLM–212).

DATES: The Final Programmatic Environmental Assessment (PEA) and the Finding of No Significant Impact (FONSI) will be available on October 31, 2001.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. The Final Programmatic Environmental Assessment (PEA) and the Finding of No Significant Impact (FONSI) are available for inspection or copying in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket, including the PEA, on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, the proposed project, or the associated assessment, call Ms. Kebby Kelley, U.S. Coast Guard, telephone 202–267–6034. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Proposed Action

The U.S. Coast Guard (USCG) proposes to decommission and/or declare excess the remaining vessels in its aging fleet of 180-foot seagoing buoy tenders and declare the former United States Coast Guard Cutter, FIR (WLM–212), excess to its needs. The USCG has determined that the entire class of 180-foot vessels is eligible for listing in the National Register of Historic Places (NRHP). Additionally, FIR (WLM–212) is a National Historic Landmark listed on the NRHP. The USCG intends to replace the 180-foot WLBs with 175-foot Coastal Buoy Tenders (WLMs) and 225-foot Coastal Buoy Tenders (WLBs). These new vessels will support the same mission requirements as the 180-foot WLBs, with state-of-the-art technology.

While the 180-foot WLBs have contributed to nearly every USCG mission area, their primary contribution has been servicing the Short Range Aids to Navigation System. All 180-foot WLBs are over 50 years of age and further renovation is impractical. Excessive maintenance problems stemming from the age of these vessels are also being experienced with resultant reduced reliability and increased operating costs. The Federal Property Administrative Services Act (FPASA) (40 U.S.C. Chapter 10) requires that excess property be identified and declared as such. Therefore, the USCG has an operational, economic, and legal need to cost-effectively rid itself of obsolete and inefficient vessels that can no longer effectively carry out the USCG missions they were designed for. Consequently, the USCG is proposing to decommission (remove the vessels from active use) and declare the current WLB fleet excess to its needs. In order to declare a vessel excess, the USCG must complete a report of survey that states that the vessel is excess to its needs. The USCG provides the General Services Administration (GSA) with a Standard Form 120 for the excess material. Following submittal to GSA, the standard mandated GSA process for disposing of Federally owned materials ensues. Built in 1939, FIR (WLM 212) is classified as a National Historic Landmark and as such is listed on the NRHP. Homeported for 50 years in Washington State, FIR served buoys, lighthouses, and other navigation aids in the Pacific Northwest. FIR is the last surviving unaltered American lighthouse tender, and was the last working member of the U.S. Lighthouse Service fleet.

The FIR has reached the end of its service life. The vessel is over 50 years of age. Excessive maintenance problems stemming from the age of FIR were experienced with resultant reduced reliability and increased operating costs. As a result of its age and condition, the USCG decommissioned FIR in 1996. At present, the USCG is incurring costs to store the vessel in Suisun Bay, California. As previously stated, it is a requirement of the FPASA that excess property be identified by the USCG and declared as such. Therefore, the USCG has an operational, economic, and legal need to cost effectively rid itself of the obsolete and inefficient FIR.

Final Programmatic Environmental Assessment

The Coast Guard completed a draft Programmatic Environmental Assessment (PEA) in March of 2001 and published a Notice of Availability in the **Federal Register** on April 23, 2001 (66 FR 20513). The draft PEA identified and examined the reasonable alternatives to our proposed action and assessed potential environmental impacts. The alternatives analyzed in the draft PEA were chosen because they fulfilled the need for the USCG to cost effectively and legally rid itself of obsolete and inefficient vessels that can no longer effectively carry out the USCG missions they were designed for. In analyzing these alternatives for environmental impact, the draft PEA looked at the impacts of decommissioning and excessing which we control, and then generally, at the possible environmental impacts resulting from each component of the mandated disposal process—the connected actions to the decommissioning and/or excessing of our remaining 180-foot vessels and FIR.

The draft PEA concluded that the only area of significant impact from the Coast Guard's proposed action was the impact to the historic character of the vessels. However, the PEA states the Coast Guard's commitment to performing photo-documentation and the completion of historic narratives for the remaining vessels in the 180-foot fleet and for, FIR. The photographs and the historic narratives will be deposited in the Library of Congress and distributed to the affected states and interested parties. Future generations will thus have the ability to appreciate the contribution of these vessels to this nation's maritime history. The Coast Guard's commitment to providing the historical documentation, as indicated in the PEA, will mitigate the potential for significant impacts to historic resources to an insignificant level.

No substantive comments or environmental concerns related to the draft PEA or the Coast Guard's proposed action were received during the comment period for the draft PEA. Therefore, this notice announces our decision to make the draft PEA our final PEA without any further revisions. Additionally, this notice announces the availability of our FONSI for the proposed action described in the PEA. All those who received a copy of the draft PEA, will receive a copy of the final PEA cover pages and the FONSI along with a letter explaining our

decision to make the draft our final document.

Dated: October 24, 2001.

Harvey E. Johnson,

Rear Admiral, U.S. Coast Guard, Director of Operations Capability.

[FR Doc. 01–27387 Filed 10–30–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 24, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 30, 2001 to be assured of consideration.

Internal Revenue Service

OMB Number: 1545–1465.

Regulation Project Number: PS–54–94 Final.

Type of Review: Extension.

Title: Environmental Settlement Funds—Classification.

Description: Section 7701 and the regulations thereunder classify entities for federal tax purposes as partnerships, associations, and trusts. Section 671 requires a grantor treated as an owner of a portion of a trust to include items in income. This regulation provides reporting rules.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Respondent: 4 hours.

Frequency of Response: Other (Once).

Estimated Total Reporting Burden: 2,000 hours.

OMB Number: 1545–1471.

Regulation Project Number: REG–209626–93 Final.

Type of Review: Extension.

Title: Notice, Consent, and Election Requirements under Sections 411(a)(11) and 417.

Description: These regulations concern the ability to make a distribution from a qualified plan within 30 days of giving the participant a written explanation of the distribution options provided the plan administrator informs the participant of the right to have at least 30 days to consider the options.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 750,000.

Estimated Burden Hours Per Respondent: .011 hours.

Frequency of Response: Other (once each year).

Estimated Total Reporting Burden: 8,333 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 01–27368 Filed 10–30–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

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 Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the U.S. Treasury Auction Submitter Agreement.

DATES: Written comments should be received on or before December 27,2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: U.S. Treasury Auctions Submitter Agreement.

OMB Number: None.

Form Number: PD F 5441.

Abstract: The information is requested to establish an account for entities wishing to submit bids directly in U.S. Treasury Auctions for the purchase of Treasury securities.

Current Actions: None.

Type of Review: New.

Affected Public: Depository Institutions, Brokers/Dealers, and Funds/Assessment Management Companies.

Estimated Number of Respondents: 900.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 72.

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.

Dated: October 19, 2001.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 01–27364 Filed 10–30–01; 8:45 am]

BILLING CODE 4810–39–P

Federal Register

Wednesday,
October 31, 2001

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 13

Flight Operational Quality Assurance Program; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No. FAA–2000–7554; Amendment No. 13–30]

RIN 2120–AF04

Flight Operational Quality Assurance Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule codifies enforcement protection for Flight Operational Quality Assurance (FOQA) programs. It states that except for criminal or deliberate acts, the Administrator will not use an operator's FOQA data or aggregate FOQA data in an enforcement action against that operator or its employees when such FOQA data or aggregate FOQA data is obtained from a FOQA program that is approved by the Administrator. The rule requires air carriers participating in approved FOQA programs to submit aggregate FOQA data to the FAA for use in monitoring safety trends.

EFFECTIVE DATE: November 30, 2001.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas Longridge, Flight Standards Service, AFS–230, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, telephone (703) 661–0275, email: *thomas.longridge@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page *(http://dms.dot.gov/search).*

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you wish to view.

You can also get an electronic copy using the Internet through FAA's web page at *http://www.faa.gov/avr/armhome.htm* or the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at our site, *http://www.faa.gov/avr/arm/sbrefa.htm*. For more information on SBREFA, e-mail us 9–AWA–SBREFA@faa.gov.

Background

The primary purpose of a Flight Operational Quality Assurance program (FOQA) is to enhance aviation safety. A FOQA program involves the analysis of digital flight data generated during routine line operations in order to reveal situations that may require corrective action, to enable early intervention to correct adverse safety trends before they can lead to accidents, and to provide an objective means of following-up on corrective action to determine whether it has been effective. To institute such a program, an operator would need to develop a system that captures digital flight data, transforms the data into an appropriate format for analysis, analyzes the data, and generates reports and visualizations to assist personnel in interpreting the results of analysis.

In 1995 the FAA initiated a voluntary FOQA demonstration program in cooperation with interested operators. The demonstration study determined that the information and insights provided by a FOQA program can significantly enhance line operational safety, training effectiveness, operational procedures, maintenance and engineering procedures, ATC procedures, and airport surface issues. The demonstration study found that FOQA programs can provide objective safety related information from line operations that is not available from any other source.

On April 5, 2000, the President signed the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (known as AIR–21). Section 510, entitled *Flight Operations Quality Assurance Rules,* directed the Administrator to issue a Notice of Proposed Rulemaking to protect air carriers and their employees from enforcement actions for violations of title 14, Code of Federal Regulations, (other than criminal or deliberate acts) that are reported or discovered as a result of voluntary reporting programs, such as FOQA.

Airlines and pilot associations have strongly endorsed the voluntary establishment of FOQA programs in the interest of safety. However, they have also stated that they will not continue to voluntarily participate in FOQA programs unless the FAA codifies regulatory protection from the use of FOQA information in enforcement action against operators or their employees, except for criminal or deliberate acts.

On July 5, 2000 (65 FR 41528), the FAA published a Notice of Proposed Rulemaking (NPRM) to provide protection from the use of FOQA information for punitive enforcement purposes, subject to certain conditions, and to retain FAA discretion to use FOQA data or aggregate FOQA data in remedial enforcement action. The FAA carefully considered all of the comments that were submitted, along with the duty of the FAA to address adverse safety conditions. This final rule codifies a level of enforcement protection for FOQA information that is consistent with the congressional direction provided in Section 510 of AIR–21. Namely, it provides operators and their employees with protection from the use of FOQA information for enforcement, except for criminal or deliberate acts. The FAA anticipates that this final rule will encourage the further growth of voluntary FOQA programs in the United States, and will thereby enhance public safety, as well as provide the FAA with trend information to better manage its safety oversight and regulatory decision making responsibilities.

This final rule does not require any operator to implement a FOQA program, nor does it require any operator who desires to voluntarily implement such a program to obtain FAA approval to do so, or to submit FOQA information from such an internal program to the FAA. However, in order to qualify for the enforcement protection afforded by this rule, the rule provides that FAA initial and continuing approval of the proposed program would be required, as well as the submission of aggregate FOQA information to the FAA.

Discussion of Comments and Section-by-Section Analysis

The FAA received six written comments on the proposed rule, one of which was a consolidated comment from multiple airline and pilot association groups (Air Transport Association of America, the Air Line Pilots Association, the Aerospace Industries Association, the Coalition of Airline Pilots Association, the Independent Association of Continental Pilots, and the Regional Airline Association). Additional organizational commenters were the Transportation Trades Department, the Advocates for Legitimate and Fair Aviation Regulations, and an additional comment from the Regional Airline Association. Two individuals submitted comments. The FAA also participated in two meetings with industry representatives to hear their comments about the NPRM. The contents of those meetings as well as a list of the participants appear in the docket. The comments are discussed below, along with the provisions of the final rule.

The Rule in General

The proposed rule was intended to codify certain protection from the use of FOQA information for punitive enforcement purposes for operators of voluntary FOQA programs that have been approved by the FAA. The proposal would require operators of approved FOQA programs to submit aggregate FOQA data to the FAA. Operators who do not seek such enforcement protection would not be required to obtain FAA approval of their voluntary programs, nor would they be required to submit FOQA data to the FAA. The proposed rule would not require any operator to establish a FOQA program.

Comment: One commenter asserted that under 49 U.S.C. 44701 the FAA is only empowered to issue regulations that establish minimum standards required in the interest of safety, and there is therefore no legal basis for this proposed rule.

FAA Response: As noted by the commenter, 49 U.S.C. Section 44701(a) also authorizes the FAA to issue regulations and minimum standards for other practices, methods, and procedures that the Administrator finds necessary for safety in air commerce. Under this section the FAA is clearly authorized to issue regulations for programs that the Administrator has determined will enhance safety, and to establish minimum standards for such programs, including voluntary programs. The Administrator has determined that voluntary FOQA programs enhance safety, and further, that this final rule is necessary in order to establish the necessary conditions for voluntary participation by airlines and pilot associations in FOQA programs. There are already examples of other voluntary safety enhancement programs that have been codified in 14 CFR, such as the Aviation Safety Reporting Program (ASRP).

Comment: One commenter noted that an operator who elects to establish a FOQA program without complying with the proposed rule would not be in violation of the regulations.

FAA Response: The FAA concurs. Nothing in the proposed regulation or in the final rule would compel an operator who does not seek the enforcement protection afforded by the rule to comply with the provisions of the rule.

§ 13.401(a) Applicability (Proposed § 13.401(a)). Who Is Eligible for the Enforcement Protection Afforded by This Rule?

The NPRM stated that the rule applies to any operator of an aircraft who operates that aircraft under an FAA approved FOQA program. It is not necessary for an operator to be a certificated air carrier in order to be eligible for the enforcement protection afforded by the rule, so long as they are operating in compliance with an FAA approved FOQA program. An operator who elects to operate a FOQA program that is not approved by the FAA in accordance with this rule may do so, but will not be afforded the enforcement protections of this rule. No comments specific to the applicability of this rule to operators were received and the subparagraph is adopted as proposed.

§ 13.401(b) Definitions (Proposed § 13.401(b)). What Is the Meaning of the Key Terminology Employed in This Rule?

No comments specific to the definitions in the proposed rule were received, although one commenter asserted that there is general ambiguity in the proposed rule language, and several of the other commenters' comments appear to indicate a misunderstanding of the proposed language. The FAA has therefore clarified the definitions of each such term. In addition, the definitions for remedial and punitive enforcement have been deleted, as they are no longer applicable to the final rule.

§ 13.401(b)(1) Flight Operational Quality Assurance (FOQA) Program (Proposed § 13.401(b)(1)) What Constitutes a FOQA Program?

The NPRM stated that a FOQA program means an FAA-approved program for the routine collection and analysis of data gathered during aircraft operations by means of a DFDR, including data currently collected under existing regulations. The final rule definition inserts the words ''digital flight'' before data, to clarify that the data to be collected is digital flight data. The reference to ''DFDR'' is deleted in the definition of a FOQA program in the final rule. This is because the technology used to acquire FOQA data is expected to evolve over time, and it is not necessary to define a FOQA program on the basis of the technology that is used to record the data. The final definition was also modified to clarify that data that operators currently collect under the regulations will not be included in FOQA data unless it is identified for inclusion in an approved FOQA program. An operator may elect, for example, to establish a FOQA program using only the data recorded by the mandatory DFDR, rather than by using the supplementary recorder commonly employed in current airline FOQA programs. Indeed, as the technological capabilities of the mandatory flight data recorder continue to evolve, operators may find that there is no longer a need for a supplementary recorder to collect all of the parameters an operator desires to include in a FOQA program, since a single recorder may be sufficient to meet both regulatory and FOQA program requirements. The final definition adds the words ''when such data is included in an approved FOQA program'' to the proposed language. This change was made to clarify that data currently collected under the regulations will be considered by the FAA to be included in a FOQA program only when it has been identified for inclusion in an approved program.

§ 13.401(2) FOQA Data (Proposed § 13.401(2)). What Is FOQA Data?

The NPRM stated that FOQA data means any raw data that has been collected by means of a DFDR pursuant to an FAA-approved FOQA program. The final rule definition replaces the reference to ''raw data'' with ''digital flight data'', inserts additional language indicating that for the purposes of this rule, FOQA data is collected ''from an individual aircraft'', inserts additional language ''regardless of the electronic format of that data'', and deletes the

proposed definition language ''by means of a DFDR''. The term ''raw data'' was deleted because it is subject to varying interpretations (e.g. binary data or engineering units). The reference to DFDR was deleted for the reasons cited above. Reference to individual aircraft was added to clarify that for the purposes of this rule, FOQA data refers to digital flight data gathered from an individual aircraft. The languagee ''regardless of electronic format'' was added to clarify that for the purposes of this rule any digital data collected from an individual aircraft in an FAA approved FOQA program shall be considered to be FOQA data, regardless of whether it is in binary format, engineering unit format, FOQA exceedence event format, or another electronic format.

§ 13.401(b)(3), Aggregate FOQA Data. What Is Aggregate FOQA Data?

The NPRM stated that aggregate FOQA data means the summary statistical indices that are associated with FOQA event categories, based on an analysis of FOQA data recorded by digital flight data recorders (DFDRs) during aircraft operations. The proposed definition was modified to delete ''recorded by digital flight data recorders (DFDRs)'' for the reasons cited above. The proposed language ''during aircraft operations'' was replaced with ''from multiple aircraft operations.''. The latter change was made to clarify that for the purposes of this rule the term aggregate data only applies to multiple aircraft operations. The definition of aggregate FOQA data in the final rule retains the basic meaning provided in the proposed rule, namely that aggregate FOQA data means the summary statistical indices that are associated with FOQA event categories, based on analysis of FOQA data. Individual data records (FOQA data) may be aggregated along various dimensions (*e.g.,* event category as a function of aircraft type, phase of flight, and geographical location) to identify trends and patterns. Aggregation is simply a statistical process that groups and mathematically combines (e.g., count, total, average, standard deviation) individual FOQA data elements based on some criterion (e.g. the average approach maximum rate of descent below 2000 feet by fleet type by airport).

Proposed definitions § 13.401(b)(4), Remedial Enforcement Action, and § 13.401(b)(5), Punitive Enforcement Action, have been deleted from the definitions section of the final rule, as these terms are no longer applicable to the final rule for the reasons discussed below.

§ 13.401(c) Requirements (Proposed § 13.401(c)). What Is an Operator Required To Do To Be Eligible for the Enforcement Protection Provisions of This Rule?

The NPRM proposed that, to be eligible for the enforcement protection provisions of the rule, an operator would have to submit and adhere to a FOQA Implementation and Operations (I & O Plan) approved by the Administrator that would include the following:

(1) The operator's plan for collecting and analyzing flight data,

(2) Procedures for taking corrective action,

(3) Procedures for providing the FAA with aggregate data, and

(4) Procedures for informing the FAA of each corrective action.

Comment: One commenter objected to the requirement to obtain FAA approval of a voluntary program, and asserted that the FAA has no authority to require such approval.

FAA Response: The rule only requires that operators who seek the enforcement protection afforded by the rule must submit a FOQA Implementation and Operations Plan for FAA approval. Operators who do not seek such protection are not required to submit or adhere to an approved plan. The FAA cannot extend enforcement protection to an undefined program. The requirement for operators to submit and adhere to an FAA approved plan is intended to assure that in return for certain enforcement protection, the FAA's goals for the enhancement of public safety will be achieved. Just as the FAA has the authority and responsibility to enforce the aviation regulations, it clearly has the authority to define the conditions on which basis any enforcement protection from those regulations will be afforded. The Aviation Safety Reporting Program is an existing example of the exercise of that authority to extend enforcement protection in the overall interest of safety enhancement, subject to certain conditions.

Comment: One commenter questioned the language of § 13.401(c)2 that requires a FOQA I & O Plan to identify procedures for taking corrective action that analysis of the data indicates is necessary in the interest of safety. The commenter questioned whether the operator or the FAA makes the determination of whether corrective action is needed and raised the question of the consequences of a disagreement between the FAA and the operator on that issue.

FAA Response: The rule clearly places the primary responsibility with the operator for determining whether analysis of FOQA data indicates that corrective action is necessary in the interest of safety. This is why the I & O Plan requires the operator to identify the procedures it will follow if corrective action becomes necessary. Further, since only the operator has access to FOQA data from individual flights, only the operator is in a position to determine whether analysis of such data warrants corrective action in that circumstance. The rule does, however, require the operator to inform the FAA of each corrective action it undertakes based on FOQA data. It also requires the operator to submit aggregate FOQA data that the FAA could employ to identify adverse safety trends, which the agency might determine warrant corrective action. Since FOQA is a voluntary program that represents a shared commitment to safety enhancement, the FAA believes that differences of opinion on the necessity and appropriateness of corrective action will be relatively few, and that any such differences will normally be resolved through mutual discussion. The rule clearly provides the operator of an approved program with protection from enforcement action in the unlikely event that differences of opinion on such issues cannot be resolved.

However, § 13.401(g) of the rule also provides that the FAA may withdraw program approval if the agency determines that the operator has failed to implement corrective action that analysis of available FOQA data indicates is necessary in the interest of safety or the operator has failed to correct a continuing pattern of violations following notice by the agency. Thus while the operator has the primary responsibility for determining when corrective action is warranted, and for determining the nature of that action, the operator and the FAA must ultimately agree on these matters. This approach helps to assure that FOQA programs do in fact enhance public safety. In the event that the FAA and the operator cannot agree, the only potential consequence to the operator is the withdrawal of program approval. In the event that program approval is withdrawn, the operator will not have enforcement protection under this rule for FOQA data obtained subsequent to the withdrawal. However, the operator may continue to conduct its FOQA program if it determines that it is appropriate for it to do so.

Comment: One commenter asserted that the references in the NPRM to the required content of a FOQA I & O Plan did not contain sufficient information. The commenter observes that no doubt the FAA intends to require more in the I & O Plan than the NPRM states. The commenter asserts that the NPRM's reference to a future advisory circular that provides further detail is an ''extra-legal mechanism to create a stealth regulation''.

FAA Response: The FAA does not concur. The FAA believes that the rule contains all of the essential elements that the FAA will require for approval purposes. The intent of the planned advisory circular referenced in the NPRM is to provide applicants with one way, but not the only way, of complying with the provisions of the proposed rule with regard to developing the content of a FOQA I & O Plan. The FOQA Advisory Circular, which is being published concurrently with this final rule, does not add any additional requirements beyond those specified in the rule. Although the issuance of a FOQA Advisory Circular has necessarily been linked to the issuance of a final FOQA rule, the FAA already has made advisory materials, including a detailed I & O Plan template, available to any interested operator for the past 5 years. With regard to the content of a FOQA I & O Plan, the existing advisory materials closely match the requirements of this rule, as well as the FOQA Advisory Circular.

The FAA adopts § 13.401(c) as proposed, with two minor working additions for clarification purposes that do not change the meaning of the section as originally proposed. The word ''maintain'' was inserted into proposed paragraph § 13.401(c), as in ''the operator must submit, maintain, and adhere to a FOQA Implementation and Operations Plan * * *.'' This word was inserted to clarify that under this final rule an operator will be expected to maintain the currency of its FOQA I & O Plan. The phrase ''including identification of the data to be collected'' was added to proposed § 13.401(c)(1), as in ''a description of the operator's plan for collecting and analyzing flight recorded data from line operations on a routine basis, including identification of the data to be collected.'' The language was added to clarify that the operator's plan must identify the data to be collected. The FAA does not intend to prescribe what data an operator will collect in its FOQA program as a condition for approval of FOQA I & O Plans. However, in order to allow the FAA to accomplish meaningful interpretation and additional processing of the aggregate data received from operators, it must be provided with information in advance that identifies the data to be collected. FOQA I & O plans that have been approved under existing FAA policy already contain that information.

§ 13.401(d) Submission of Aggregate Data (Proposed § 13.401(d), Access to Data). What Data Must Be Submitted to the FAA?

The NPRM proposed that the operator would provide the FAA with aggregate FOQA data in a form and manner acceptable to the Administrator.

Comment: One commenter asserted that the FAA has no authority to require submission of data for a voluntary program.

FAA Response: The submission of aggregate FOQA data to the FAA is a condition for the enforcement protection afforded by this rule. Just as the FAA has the authority and responsibility for enforcing the aviation regulations, it clearly has the authority to define the conditions on which basis any enforcement protection from those regulations will be afforded. The Aviation Safety Reporting Program is an existing regulatory example of the exercise of that authority to extend enforcement protection in the overall interest of safety enhancement, subject to certain conditions.

Comment: A number of commenters expressed concern that by virtue of this requirement, the FAA intends to force airlines to comply with FAA prescribed data collection requirements. These commenters stated that any such attempt by the FAA would adversely impact the effectiveness of such programs, and inhibit initiative to explore new areas for data collection.

FAA Response: The FAA does not intend to require operators to comply with FAA specified data collection protocols. The FAA acknowledges that were it to do so, it could adversely effect the continued growth and effectiveness of voluntary FOQA programs. The FAA notes that if the agency intended to prescribe data collection requirements, then it would have proposed specific requirements in the NPRM.

Comment: A number of commenters observed that various operators employ different definitions for FOQA events. These commenters stated that it would therefore not be possible for the FAA to accomplish meaningful aggregation of data, and they recommended that this requirement therefore be deleted.

FAA Response: The FAA is aware of the commonalities and differences in how operators define FOQA events. First, any differences among operators would not impact FAA aggregation specific to a particular operator. Second, with regard to aggregation across multiple operators, the FAA has established a statistical approach which will allow it to accomplish meaningful trend analysis that fully takes into account whatever differences may exist in event definitions between operators. One of the functions of a FOQA I & O Plan is to provide the FAA with the information it needs in order to appropriately accomplish aggregation across multiple operators. Proposed § 13.401(d) is adopted without modification, except for the title of the paragraph. The title has been changed from proposed ''Access to data'' to ''Submission of Aggregate Data'' in the final rule in order to more accurately describe the content of the paragraph.

§ 13.401(e) Enforcement (Proposed § 13.401(e)) What Protections Does This Rule Provide Against the Use of FOQA Data by the FAA for Enforcement Purposes?

As proposed in the NPRM, § 13.401(e)(1) would have provided that the Administrator could not use an operator's FOQA data or aggregate FOQA data in a punitive enforcement action against that operator or its employees when such FOQA data or aggregate FOQA data is obtained from a FOQA program that is approved by the Administrator. Proposed § 13.401(e)(2) provided that the Administrator could use any operator's FOQA data and/or aggregate FOQA data in a remedial enforcement action.

Comment: The majority of commenters took strong exception to the provisions of proposed § 13.401(e)(1) and § 13.401(e)(2). They stated that there is one critical paragraph of the proposed rule that must be corrected to ensure industry participation and support regarding FOQA. They stated that § 13.401(e)(1) must be rewritten to read ''The Administrator will not use an operator's FOQA data or aggregate FOQA data in enforcement actions against that operator or its employees except for criminal or deliberate acts''. They noted that this revised language would be consistent with the language of Section 510 of the Wendell H. Ford Aviation Investment and Reform Act of the 21st Century (AIR–21) concerning FOQA. These commenters also took strong exception to proposed § 13.401(e)(2), which would have allowed the use of FOQA data and/or aggregate FOQA data for remedial enforcement purposes. These commenters stated that this paragraph must be removed from the rule in order to assure industry participation and

support regarding FOQA programs. They stated that this paragraph utterly destroys the spirit, intent, and operational effectiveness of any FOQA program, and inpugns the credibility of the rule itself. They stated that removing this paragraph from the rule would make the rule workable, acceptable, and supportable from an industry standpoint. They stated that in order to elicit industry support, all references to remedial and punitive actions should be removed from the preamble. One commenter noted that the rationale in the NPRM for retaining remedial enforcement authority as stated in the preamble does not appear to be consistent with the fact that the existing regulations extend protection from both civil penalty and certificate action for the cockpit voice recorder record.

FAA Response: With one minor exception, the FAA concurs with these commenters. The FAA agrees that it is in the best overall interest of encouraging voluntary participation in FOQA, thereby enhancing public safety, to modify the language of the proposed rule regarding the use of FOQA data or aggregate data for enforcement purposes. The FAA further agrees that it is consistent with the intent of Congress as embodied in Section 510 of AIR–21, as well as with existing regulatory precedent, to make this change. However, the FAA believes that it is only appropriate to extend such enforcement protection to a FOQA program that has been approved by the Administrator. Accordingly, the language of the final rule has been modified to delete proposed paragraphs § 13.401(e)(1) and § 13.401(e)(2), and to replace them with a single paragraph § 13.401(e) which states that except for criminal or deliberate acts, the Administrator will not use an operator's FOQA data or aggregate FOQA data in an enforcement action against that operator or its employees when such data or aggregate data is obtained from a FOQA program that is approved by the Administrator.

Although the language of the final rule clearly provides protection, except for criminal or deliberate acts, from the use of information obtained from a FOQA program for enforcement purposes, this rule will have no impact on FAA enforcement action based on information obtained from other sources. For example, while the operator has a responsibility to initiate corrective action for adverse safety trends revealed by FOQA data, the FAA has the responsibility to verity that such corrective action is effective. This rule provides no protection from action based on information obtained from surveillance activities, including physical surveillance undertaken by the FAA to verify the effectiveness of corrective actions. One of the principal benefits to the FAA and to public safety of aggregate FOQA data submission will be the opportunity it affords to target the limited resources available for FAA surveillance to those areas where it is most needed. The FAA fully anticipates that it will conduct physical surveillance for that purpose in areas identified by FOQA aggregate trend data. FAA discretion to take action, including enforcement action where appropriate, based on such surveillance activities will not be affected by this final rule.

§ 13.401(f) Disclosure (Proposed § 13.401(f)) What Protections From the Disclosure of FOQA Information Will the FAA Provide?

The NRPM proposed that FOQA data and aggregate FOQA data, if submitted in accordance with the provisions of Part 193, would be afforded the nondisclosure protections of that part.

Comment: One commenter observed that this provision of the NPRM makes reference to a non-existent part.

FAA Response: Part 193 had not yet been issued as a final rule when the NPRM was issued. Part 193 was published on June 25, 2001 (66 FR 33791) as a final rule. Part 193 provides in part that the FAA may issue an order designating certain voluntarily provided safety information as protected from disclosure. The FAA intends to publish in the **Federal Register** a proposed order to protect FOQA data and aggregate FOQA data under part 193. If adopted, the order under part 193 will cover all approved FOQA programs entered into by all operators.

Section 13.401(f) provides that FOQA data and aggregate FOQA data, if submitted in accordance with an order designating the information as protected under part 193 of this chapter, will be afforded the nondisclosure protections of that part.

§ 13.401(g) Withdrawal of Program Approval (Proposed § 13.401(g)) On What Grounds May the Administrator Withdraw Approval of a Previously Approved FOQA Program?

This paragraph states that the Administrator may withdraw program approval for failure to comply with the requirements of the chapter. It further identifies some, but not necessarily all, of the potential grounds for withdrawal, including:

(1) Failure to implement corrective action that analysis of available FOQA data indicates is necessary in the interest of safety,

(2) Failure to correct a continuing pattern of violations following notice by the agency, and

(3) Willful misconduct or willful violation of the regulations.

No comments on this paragraph were received, and it is adopted without modification.

Paperwork Reduction Act

The amendment to 14 CFR Part 13 contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of these sections to the Office of Management and Budget for its review. The collection of information was approved and assigned OMB Control Number 2120–0660. The FAA received no comments pertaining to the Paperwork Reduction Act.

Following is a summary of the information requirement that was sent to OMB.

Title: Flight Operational Quality Assurance (FOQA) Rule.

Summary/Need/Uses: Flight Operational Quality Assurance (FOQA) is a program for the routine collection and analysis of digital flight data from airline operations, including but not limited to digital flight data currently collected under the regulations. By this amendment, the FAA will require certificate holders who voluntarily establish approved FOQA programs to periodically provide aggregate trend analysis information from such programs to the FAA.

The purpose of collecting, analyzing, aggregating, and reporting this information is to identify potential threats to safety, and to enable early corrective action before such threats lead to accidents. The submitted aggregate trend information will be reviewed by the FAA principal operations inspector (POI) responsible for oversight of the certificate holding respondent. The POI uses this information to monitor operation trends, to identify areas in need of corrective action, and to verify that corrective action is effective. The aggregate FOQA information would also be employed by the FAA to monitor national trends and as a source of objective information for agency decision making regarding policy and regulatory issues.

Respondents and Frequency of Response: The FAA has identified 30 certificate holders who are candidates to take the necessary steps to comply with the rule and gain the benefits of so doing. They would respond monthly. However, currently twelve certificate

holders, nearly all of which are major airlines, have established FOQA programs. Because of the benefits of FOQA participation to both safety and cost containment, it is anticipated that FOQA will be implemented on an industry wide basis in the U.S. within the next twenty years.

Burden Hours: It is estimated that it will take each respondent 1.0 hour to prepare aggregate trend information to be submitted to the FAA. The annual burden per respondent is 12.0 hours for an annual industry burden of 144 hours.

The estimated 1.0 hour burden is the additional time required to send to the FAA the aggregate data already produced monthly by the certificate holder as part of an approved FOQA program.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined this rule (1) has benefits which do justify its costs, is ''a significant regulatory action'' as defined in the Executive Order and is ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; and (3) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses are summarized below.

Any costs associated with providing the FAA with aggregate FOQA data is expected to be nominal. The FAA does not propose to require submission of FOQA data from individual flights to the government. The FAA anticipates that information obtained by airline FOQA programs will be voluntarily submitted to the FAA in the interest of joint goals to promote safety, and that because of the objective nature of FOQA data, this information will be valuable for formulating future policy, NAS procedures, and rulemaking development. This information will enable the FAA to more accurately compute the estimated cost and benefits of agency decisions.

This final rule is an enabling initiative intended to promote the voluntary establishment of FOQA programs. The FAA has determined that because the establishment of FOQA programs is voluntary and the final rule only requires certificate holders who voluntarily establish approved FOQA programs to provide periodically the aggregate trend data from such programs to the FAA, the costs from this rule are nominal. Therefore, an economic evaluation is not warranted.

International Trade Impact

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this final rule to be minimal and therefore has determined that this rule will not result in an impact on international trade by companies doing business in or with the United States.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes (as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.) To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This action establishes a voluntary program and therefore the FAA expects this rule to impose only nominal cost on small entities. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this rulemaking does not have federalism implications.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Unfunded Mandates Reform Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement.

In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the notice is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 13

Administrative practice and procedure, Air transportation, Aviation safety, Investigations, Law enforcement.

The Admendment

In consideration of the foregoing, the Federal Aviation Administration amends part 13 of the Federal Aviation Regulations (14 CFR part 13) as follows:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

1. The authority citation for part 13 continues to read as follows:

Authority: 18 U.S.C. 6002; 28 U.S.C. 2461; 49 U.S.C. 106(g); 5121–5124, 40113–40114, 44103–44106, 44702–44703, 44709–44710, 44713, 46101–46110, 46301–46316, 46501–46502, 46504–46507, 47106, 47111, 47122, 47306, 47531–47532.

2. Subpart I, consisting of § 13.401 is added to read as follows:

Subpart I—Flight Operational Quality Assurance Programs

§ 13.401 Flight Operational Quality Assurance Program: Prohibition Against Use of Data for Enforcement Purposes

(a) *Applicability.* This section applies to any operator of an aircraft who operates such aircraft under an approved Flight Operational Quality Assurance (FOQA) program.

(b) *Definitions.* For the purpose of this section, the terms—

(1) *Flight Operational Quality Assurance (FOQA) program* means an FAA-approved program for the routine collection and analysis of digital flight data gathered during aircraft operations, including data currently collected pursuant to existing regulatory provisions, when such data is included in an approved FOQA program.

(2) *FOQA data* means any digital flight data that has been collected from an individual aircraft pursuant to an FAA-approved FOQA program, regardless of the electronic format of that data.

(3) *Aggregate FOQA data* means the summary statistical indices that are associated with FOQA event categories, based on an analysis of FOQA data from multiple aircraft operations.

(c) *Requirements.* In order for paragraph (e) of this section to apply, the operator must submit, maintain, and adhere to a FOQA Implementation and Operation Plan that is approved by the Administrator and which contains the following elements:

(1) A description of the operator's plan for collecting and analyzing flight recorded data from line operations on a routine basis, including identification of the data to be collected;

(2) Procedures for taking corrective action that analysis of the data indicates is necessary in the interest of safety;

(3) Procedures for providing the FAA with aggregate FOQA data;

(4) Procedures for informing the FAA as to any corrective action being undertaken pursuant to paragraph (c)(2) of this section.

(d) *Submission of aggregate data.* The operator will provide the FAA with aggregate FOQA data in a form and manner acceptable to the Administrator.

(e) *Enforcement.* Except for criminal or deliberate acts, the Administrator will not use an operator's FOQA data for aggregate FOQA data in an enforcement action against that operator or its employees when such FOQA data or aggregate FOQA data is obtained from a FOQA program that is approved by the Administrator.

(f) *Disclosure.* FOQA data and aggregate FOQA data, if submitted in accordance with an order designating the information as protected under part 193 of this chapter, will be afforded the nondisclosure protections of part 193 of this chapter.

(g) *Withdrawal of program approval.* The Administrator may withdraw approval of a previously approved FOQA program for failure to comply with the requirements of this chapter. Grounds for withdrawal of approval may include, but are not limited to—

(1) Failure to implement corrective action that analysis of available FOQA data indicates is necessary in the interest of safety; or

(2) Failure to correct a continuing pattern of violations following notice by the agency; or also

(3) Willful misconduct or willful violation of the FAA regulations in this chapter.

Issued in Washington, DC, on October 25, 2001.

Jane F. Garvey,

Administrator.

[FR Doc. 01–27273 Filed 10–30–01; 8:45 am]

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Federal Register

Wednesday,
October 31, 2001

Part III

Environmental Protection Agency

40 CFR Chapter I

Project XL Site-specific Rulemaking for NASA White Sands Test Facility, Las Cruces, NM; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 Ch. I.

[FRL–7095–7]

RIN 2090–AA27

Project XL Site-specific Rulemaking for NASA White Sands Test Facility, Las Cruces, NM

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is proposing this rule to implement a pilot project under the Project XL program that would provide site-specific regulatory flexibility under the Clean Air Act (CAA), Resource Conservation and Recovery Act (RCRA), and Clean Water Act (CWA) for the National Aeronautics and Space Administration (NASA) White Sands Test Facility (WSTF) in Las Cruces, New Mexico. The principal objective of this XL project is to enable the NASA WSTF to electronically submit regulatory reports and permit information required by EPA regulations to the NMED Air Quality Bureau, Solid Waste Bureau, Hazardous Waste Bureau, Groundwater Bureau, and Surface Water Bureau in accordance with guidelines set forth in the NASA WSTF Project XL Final Project Agreement (FPA). This project would significantly reduce NASA's regulatory reporting costs and enhance the NMED's ability to analyze and manage NASA WSTF's regulatory and permit information.

DATES: Public Comments: Comments on the proposed rule must be received on or before November 30, 2001.

Public Hearing: Commentors may request a hearing by November 14, 2001. Commentors must state the basis for requesting the public hearing. If EPA determines there is sufficient reason to hold a public hearing, it will do so no later than November 30, 2001, during the last week of the public comment period. Requests for a public hearing should be submitted to the address listed below. If a public hearing is scheduled, the date, time, and location will be made available through a **Federal Register** Notice. If a public hearing is held, it will take place in Las Cruces, NM.

ADDRESSES: *Comments:* Written comments should be mailed to the Air Docket Clerk, Mail Code 6102, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, D.C. 20460. Please send an original and three copies of all written comments as well as an original and three copies of any attachments, enclosures, or other documents referenced in the comments and refer to Docket Number A–2000–54. A copy should also be sent to Mr. John DuPree at Mail Code 1807, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

EPA will also accept comments electronically. Electronic comments should be addressed to the following internet address: dupree.john@epa.gov. Electronic comments must be submitted as an ASCII or WordPerfect version 5.1, 6.1, or 8.0 format file, and must avoid use of special characters or any form of encryption. Electronic comments will be transferred into a paper version for the official record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission.

Request to speak at Hearing: Requests to speak at a hearing should be mailed to the Air Docket, Mail Code 6102, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460.

Viewing Project Materials: A docket containing the proposed rule, Final Project Agreement, supporting materials, and public comments is available for public inspection and copying at the Air Docket, located at Waterside Mall, 401 M St., Washington, D.C. 20460. The Air Docket is open from 9:00 am to 4:00 pm, Monday through Friday, excluding Federal holidays. The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Docket Office at (202) 260–7549. Refer to docket number A–2000–54. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost 15 cents per page. Project materials for today's action are also available on the internet at http://www.epa.gov/projectxl/.

A duplicate copy of the docket is available for inspection and copying during normal business hours at U.S. EPA Region VI, 1445 Ross Ave., Dallas, Texas 75202–2733. Persons wishing to view the duplicate docket at the Dallas location are encouraged to contact Mr. David Bond or Mr. Rob Lawrence, in advance, by telephoning (214) 665–6431 or (214) 665–6580, respectively.

FOR FURTHER INFORMATION CONTACT: Mr. John DuPree; Mail Code 1807; U.S. Environmental Protection Agency; Office of Policy, Economics, and Innovation; 1200 Pennsylvania Avenue, N.W.; Washington, D.C. 20460. Mr. DuPree's telephone number is (202) 260–4468 and e-mail address is dupree.john@epa.gov. Further information on today's action may also be obtained on the world wide web at http://www.epa.gov/projectxl/.

SUPPLEMENTARY INFORMATION: This project assesses the appropriateness of submitting regulatory and compliance information electronically instead of paper reports.

The duration of this project is five years. 016

EPA is soliciting comments on this rulemaking. EPA will publish responses to comments in the **Federal Register** and on the Project XL web-site http://www.epa.gov/projectxl. The XL project will enter the implementation phase on the effective date of a final rule. Any comments received will be made available on the Project XL web site: http://www.epa.gov/projectxl.

The terms of the overall XL project are contained in a Final Project Agreement (FPA). The FPA is available for review at the Air Docket in Washington, D.C.; EPA Region VI Library in Dallas, TX; and at the Las Cruces Public Library in Las Cruces, NM.

Outline of Today's Proposal

The information presented in this preamble is organized as follows:

I. Authority
II. Overview of Project XL
III. Overview of the NASA WSTF XL Project
  A. To Which Facilities Would the Proposed Rule Apply?
  B. What Problems would the NASA WSTF XL Project Address?
  C. What Solution is Proposed by the NASA WSTF Project?
  D. What Regulatory Changes Will Be Necessary to Implement this Project?
  E. How Have Various Stakeholders Been Involved in this Project?
  F. How Would this Project Result in Cost Savings and Paperwork Reduction?
  G. What Are the Terms of the NASA WSTF XL Project and How Would They Be Enforced?
  H. Does EPA Propose to Require Revision of NMED's Authorized, Delegated, or Approved Programs?
IV. Additional Information
  A. How Does this Rule Comply with Executive Order 12866?
  B. Is a Regulatory Flexibility Analysis Required?
  C. Does this Trigger the Requirements of the Unfunded Mandates Reform Act?
  D. How Does this Rule Comply with Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks?
  E. How Does this Rule Comply with Executive Order 13132: Federalism?
  F. How Does this Rule Comply with Executive Order 13175: Consultation and Coordination with Indian Tribal Governments?

G. How Does this Rule Comply with the National Technology Transfer and Advancement Act?
H. How Does this Rule Comply with Executive Order 13211: Energy Effects?

I. Requirements of Today's Rule

J. How Does this Rule Comply with the Paperwork Reduction Act?

I. Authority

EPA is publishing this proposed regulation under the authority of sections 33 U.S.C. 2701 to 2761; 42 U.S.C. 300f to 300J–26; 42 U.S.C. 6901 to 6992k.

II. Overview of Project XL

The Final Project Agreement (FPA) sets forth the intentions of EPA, NMED, and the NASA WSTF (hereinafter, collectively, Project Signatories) with regard to a project developed under Project XL, an EPA initiative to allow regulated entities to achieve better environmental results with limited regulatory flexibility. The proposed regulation, along with the FPA (also available in today's **Federal Register**), would facilitate implementation of the project. Project XL''eXcellence and Leadership''—was announced on March 16, 1995, as a central part of the National Performance Review and the Agency's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). Project XL provides a limited number of private and public regulated entities an opportunity to develop their own pilot projects to request regulatory flexibility that will result in environmental protection that is superior to what would be achieved through compliance with current and reasonably-anticipated future regulations. These efforts are crucial to EPA's ability to test new strategies that reduce regulatory burden and promote economic growth while achieving better environmental and public health protection. EPA intends to evaluate the results of this and other Project XL projects to determine which specific elements of the projects, if any, should be more broadly applied to other regulated entities for the benefit of both the economy and the environment.

Under Project XL, participants in four categories—facilities, industry sectors, governmental agencies, and communities—are offered the flexibility to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements, on the condition that they produce and demonstrate superior environmental performance.

The XL program is intended to enable EPA to experiment with potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis. As part of this experimentation, EPA may try approaches or legal interpretations that depart from, or are even inconsistent with, longstanding Agency practice, so long as those interpretations are within the broad range of discretion enjoyed by the Agency in interpreting the statutes that it implements. EPA may also modify rules, on a site-specific basis, that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute.

Adoption of such alternative approaches or interpretations in the context of a given XL project does not, however, signal EPA's willingness to adopt that interpretation as a general matter, or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first determining whether they are viable in practice and successful in the particular projects that embody them. Furthermore, as EPA indicated in announcing the XL program, EPA expects to adopt only a limited number of carefully selected projects. These pilot projects are not intended to be a means for piecemeal revision of entire programs. Depending on the results in these projects, EPA may or may not be willing to consider adopting the alternative interpretation again, either generally or for other specific facilities.

EPA believes that adopting alternative policy approaches and interpretations, on a limited, site-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (provided that the Agency acts within the discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing re-evaluation of environmental programs, is reflected in a variety of statutory provisions.

XL Criteria

To participate in Project XL, applicants must develop alternative environmental performance objectives pursuant to eight criteria: superior environmental performance; cost savings and paperwork reduction; local stakeholder involvement and support; test of an innovative strategy; transferability; feasibility; identification of monitoring, reporting and evaluation methods; and avoidance of shifting risk burden. The XL projects must have the full support of the affected Federal, State, local and tribal agencies to be selected.

For more information about the XL criteria, readers should refer to the two descriptive documents published in the **Federal Register** (60 FR 27282, May 23, 1995 and 62 FR 19872, April 23, 1997), and the December 1, 1995 ''Principles for Development of Project XL Final Project Agreements'' document. A copy of this publication is available in Docket #A–2000–54. For explanation of how the NASA WSTF XL project addresses the XL criteria, readers should refer to the Final Project Agreement available from the EPA Air docket A–2000–54, or the Project XL web page (http://www.epa.gov/projectxl).

XL Program Phases

The Project XL program has four basic developmental phases: the initial pre-proposal phase in which the project sponsor identifies an innovative concept that it would like EPA to consider as an XL pilot project; the second phase where the project sponsor works with EPA and interested stakeholders in developing an XL proposal; the third phase in which EPA, local regulatory agencies, and other interested stakeholders review the XL proposal; and the fourth phase where the project sponsor works with EPA, local regulatory agencies, and interested stakeholders in developing a Final Project Agreement and implementation mechanism. After the Final Project Agreement has been signed by all designated parties and promulgation of the final rule (or other legal mechanism) for the XL pilot, the XL pilot project proceeds to implementation and evaluation.

Final Project Agreement

The Final Project Agreement (FPA) is a written voluntary agreement between the project sponsor and regulatory agencies. The FPA contains a detailed description of the proposed pilot project. It addresses the eight Project XL criteria, and the expectation of the Agency that the XL project will meet those criteria. The FPA identifies performance goals and indicators that the project is yielding the expected environmental benefits, and specifically addresses the manner in which the project is expected to produce superior environmental benefits. The FPA also discusses the administration of the FPA,

including dispute resolution and termination. The FPA for this XL project is available for review in the docket for today's action, and also is available on the world wide web at http://www.epa.gov/projectxl/.

III. Overview of the NASA WSTF XL Project

Today's proposed rule would facilitate implementation of Phases 1 and 2 of the NASA WSTF FPA (the document that embodies EPA's intent to implement this project) that has been developed by EPA, the New Mexico Environmental Department (NMED), NASA WSTF and other stakeholders. In order for New Mexico to implement this project, it may be necessary for NMED to make conforming changes to its regulations or State-issued permits.

In this XL Project, the NASA WSTF proposes to electronically submit regulatory reports and permit information to the NMED in lieu of paper reports. This reporting process will be implemented in a six-phase process that will first utilize data submitted on a CD-ROM before transitioning to a system that will utilize the internet to transmit information to NMED. Today's rule sets forth provisions to facilitate implementation of phases 1 and 2 of this XL project. All six phases are described in Appendix A of the NASA WSTF FPA and in the Table below.

Phase	Action	Affected NMED Bureau
Phase 1	NASA WSTF shall submit the reports and permit information listed in Table A on CD-ROM to the affected NMED Bureau with an electronic certification statement for compliance purposes.	Hazardous Waste, Groundwater, Surface Water.
Phase 2	NASA WSTF shall submit the reports and permit information listed in Table A on CD-ROM to the affected NMED Bureau with an electronic certification statement for compliance purposes.	Hazardous Waste, Groundwater, Surface Water.
	NASA WSTF shall post the compliance reports and permit information listed in Table A to their web site for general information purposes.	Hazardous Waste, Groundwater, Surface Water.
Phase 3	NASA WSTF shall post the reports and permit information listed in Table A to the NASA web site for compliance purposes.	Hazardous Waste, Groundwater, Surface Water.
	Eliminate CD ROM submittals for the reports listed in Table A.	Hazardous Waste, Groundwater, Surface Water.
Phase 4	Post reports and permit information listed in Table A to the NASA Website for compliance purposes.	Hazardous Waste, Groundwater, Solid Waste.
	Submit reports and permit information listed in Table B on CD-ROM to the NMED Air Quality and Surface Water Bureaus for compliance purposes.	Air Quality, Solid Waste Bureaus.
Phase 5	Post reports and permit information listed in Table A to the NASA Website for compliance purposes.	Hazardous Waste, Groundwater, Solid Waste.
	Submit reports and permit information listed in Table B on CD-ROM to the NMED Air Quality and Surface Water Bureaus for compliance purposes.	Air Quality, Solid Waste Bureaus.
	Post reports and permit information listed in Table B to the NASA Web site for general information purposes.	Air Quality, Solid Waste Bureaus.
Phase 6	Eliminate CD-ROM submittals for the reports listed in Table B.	Air Quality, Solid Waste Bureaus.
	Post reports and permit information listed in Tables A and B to the NASA Web site for compliance with EPA and NMED reporting requirements.	Air Quality, Solid Waste, Groundwater, Solid Waste, Hazardous Waste.

Public Key Infrastructure (PKI)-Based Digital Signatures

In today's rule, EPA proposes to require the use of PKI based digital signatures to sign certifications of data submitted by NASA WSTF to NMED as part of this XL project. The PKI-based digital signatures utilized in today's proposed rule are the product of two concepts:

1. ''Asymmetric'' cryptography, and

2. a framework for ''certifying'' the identity of a digital signature-holder, provided by PKI.

''Asymmetric'' cryptography is based on a mathematical relationship that exists between certain pairs of numbers, for example number A and number B, such that

1. if A is used to encrypt a message, B and only B can decipher it, and

2. if B deciphers the message, it can only have been encrypted with A.

For purposes of a digital signature, then, A and B are uniquely assigned to individual X. One of the numbers, say A, submitter X shares with no one. This is X's ''private key''. The other, B, is X's ''public key'', and X shares B with anyone to whom X wishes to send a message—X may even publish B together with information that identifies him/her as X.

X then signs an electronic document as follows: (1) X uses a standard formula or algorithm to produce a number uniquely related to the content of the electronic document; this is referred to as the ''message digest'' or ''hash'' of the document. (2) X uses A, the private key, to encrypt this hash; this encrypted hash is X's digital signature, and it is unique both to X and to the particular message it signs. (3) X attaches this digital signature to X's message (which is otherwise not encrypted), and sends it.

When Y gets X's message, Y validates X's signature by: (1) deriving the hash of the message, using the same standard algorithm that X used; (2) deciphering X's digital signature, using X's public key, B; and (3) comparing the hash Y derived (in step 1) with the deciphered signature. The two numbers—the derived hash and the deciphered signature—should agree. If (and only if) they do, then Y knows both that the signature was produced using A (which

belongs to X), and that the message has not changed since X signed it.

Because the digital signature is specific to the particular document, and is unique in each case, to say that X is a ''signature-holder'' in this context is to refer to A and B, the private/public key-pair. The A/B key-pair does belong to X and plays the same role in each of the many digital signatures X may create through the process described above. Accordingly, it is this key-pair—rather than the individual signatures they are used to create—that is associated with the process of certifying a signature-holder's identity that is provided by PKI.

PKI is a way of reliably establishing and maintaining the identity of the individual associated with a given key-pair used in producing digital signatures. This protocol involves the issuance of a ''PKI certificate'' by a ''trusted'' ''certificate authority'' (CA). The CA is ''trusted'' in the sense that it operates in conformance with an appropriate certificate policy, and has demonstrated this conformance through its operations across a wide range of electronic commerce applications.

Issuing a certificate for individual X typically involves the following steps: (1) X applies to the CA for a certificate; (2) the CA requests various pieces of personal information from X, and/or notarized verifications of X's personal information, and/or X to appear in person, to provide the CA with the basis for ''proving'' X's identity; (3) the CA provides X with a way to generate X's unique key pair; (4) the CA conducts the ''identity proofing'' process—matching what X has provided against information about X in various commercial databases, official documents, etc.; (5) when the ''identify proofing'' is successfully completed, the CA creates a ''certificate'' for X that incorporates X's public key, along with various pieces of identifying information about X; and (6) the CA digitally signs the certificate to certify its authenticity, and makes it available to users through directory services.

Digital Signature Process

In this project, the digital certificate used to create a digital signature would be issued to a ''Designated Representative'' at the NASA WSTF by an EPA authorized Certificate Authority (CA). For the purposes of this XL project EPA has contracted with a third party to serve as the CA, to issue digital certificates to individuals at the NASA WSTF who are authorized to submit signed, electronic reports to NMED. To receive a digital certificate, a Designated Representative would be required to log-on to the CA website and provide the ''entrance'' number provided in their instruction letter from EPA and the NMED. The submitter provides the requested personal information that the CA needs to perform identity-proofing (name, address, Social Security Number, driver's license number, credit card number, etc.). This information will not be given to EPA or NMED. During this registration process, the issuer of the certificates will also generate the public and private cryptographic keys that are associated with the digital certificate that the CA will issue. After the CA has completed identity-proofing, the submitter will receive a letter from the CA with instructions on how to download the certificate to their local computer via a web connection. This web session will install the certificate in the web browser so it can be used to create digital signatures.

The electronic signing process will use software issued by an EPA-approved third party to affix a digital signature to the electronic document being submitted via CD ROM. The document is displayed to the user on the computer screen. When the submitter activates the signing block of the document, a ''signing ceremony'' is initiated. The user is advised that he/she is creating a digital signature through the use of their private key. After the user provides access to their private key by providing a password, a hash function is used to obtain a condensed or hash version of the document being submitted, called a message digest. The message digest and private key are then input into the approved software's digital signature algorithm, to generate the digital signature. Any subsequent changes to the document would render the original digital signature invalid.

Electronic Signature Agreement

Today's proposed rule would require NASA WSTF and NMED to enter into an Electronic Signature Agreement to properly use and protect the validity of the digital signatures used in this XL project. Today's rule proposes that the terms in this agreement include, a commitment to: (1) protect the private key from unauthorized use by anyone other than the Designated Representative; (2) be held as legally bound, obligated, or responsible by use of the Designated Representative's private key to create a digital signature as by handwritten signature; (3) under no circumstances, delegate the use of the private key or make it available for use by anyone else; (4) report to NMED within twenty-four hours of discovery any evidence of the loss, theft, or other compromise of any component of the digital signature; (5) immediately notify EPA and NMED in writing if the Designated Representative loses the authority to sign reports submitted to NMED as a representative of NASA WSTF; and (6) secure any assistance of third parties that is needed to protect a signature from unauthorized use. EPA believes that this agreement is important to ensure that the holder of the private key understands how to properly use and protect the key. It is also important to ensure that the signature holder understands the legal effect of using the private key to affix the digital signature to an electronic document. To achieve these goals, EPA believes that the signature agreement should require that the signature holder agree to: (1) protect the private key from unauthorized use by anyone other than the Designated Representative; (2) be held as legally bound, obligated, or responsible by use of the Designated Representative's private key to create a digital signature as by handwritten signature; (3) under no circumstances, delegate the use of the private key or make it available for use by anyone else; (4) report to NMED within twenty-four hours of discovery any evidence of the loss, theft, or other compromise of any component of the digital signature; (5) immediately notify EPA and NMED in writing if the Designated Representative loses the authority to sign reports submitted to NMED as a representative of NASA WSTF; and (6) secure any assistance of third parties that is needed to protect a signature from unauthorized use.

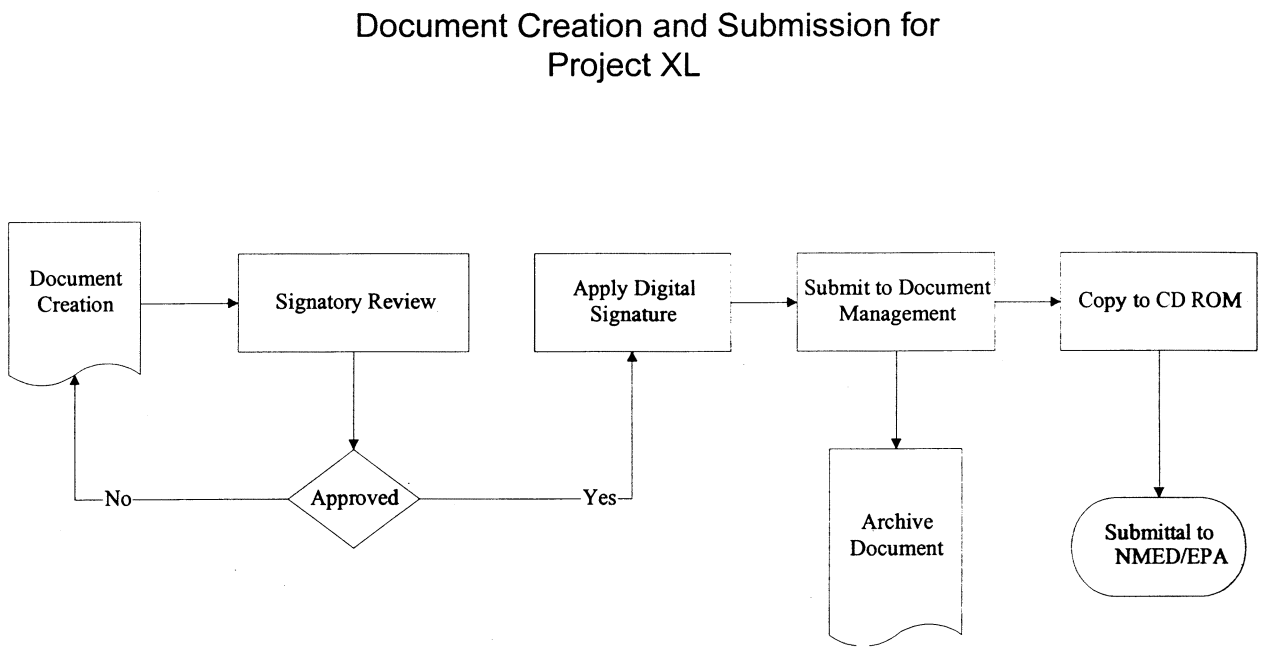
CD–ROM Submission Procedures

During the first, second, fourth and fifth phases of this project, NASA WSTF would mail compliance reports and permit information on Compact Disc-Read Only Memory (CD-ROM) to the appropriate NMED bureau. The CD-ROMs for this project would be prepared at the NASA WSTF. NASA WSTF's preparation process would include draft creation by the originator, internal review by NASA WSTF's contractor Environmental Department personnel, and final editing prior to NASA WSTF concurrence, document signature, and preparation of the CD-ROMs. After internal review and final edits are completed, the finalized document and certification statement would be electronically submitted to NASA management for signatory review. If NASA management requires changes, the document would be returned to the originator for correction. When the document is approved by the appropriate NASA management, that individual applies a digital signature using standard Public Key Infrastructure

(PKI) software and digital certificates provided by the EPA.

After the document is digitally signed, it would be submitted to the document management system. The document management system copies the electronic deliverable to CD-ROMs for submission to the regulatory agencies. The CD-ROM that contains the Project XL Final Project Agreement certification statement listed in section 7 of today's rule would then be submitted to the NMED. This certification statement would be contained in each of the reports listed in Table A of today's proposed rule that would be forwarded to NMED by NASA WSTF on a CD-ROM. In addition, the document management system would prepare a duplicate copy of all submittals and place the electronic documents in the NASA on-site document archival system for secure storage and future access. The following flow chart provides the electronic deliverable preparation steps.

BILLING CODE 6560–50–P



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Certification Statement

Each report listed in Table A of today's proposed rule forwarded to NMED as part of this XL project would include a certification statement created by the NASA WSTF Designated Representative as specified in section 7 of today's rule. The NASA WSTF Designated Representative would be a NASA official legally responsible for the accuracy and integrity of the regulatory reports and permit information submitted to NMED.

Recordkeeping Requirements

Today's rule proposes standards to provide for electronic recordkeeping of documents submitted by NASA WSTF to NMED as part of this XL project. In lieu of paper recordkeeping requirements, NASA WSTF would be required to maintain electronic records of the reports included in Table A of today's rule for a time period no shorter than what is currently required under existing NMED and EPA regulations. The point of today's proposed rule requirements in section 8 is to ensure that the authenticity and integrity of the electronic documents submitted to NMED by NASA WSTF as part of this XL project, are preserved as they are created, submitted and/or maintained electronically, so that they can provide strong evidence of what was intended by the individuals who created and or signed them.

A. To Which Facilities Would the Proposed Rule Apply?

The proposed rule would apply only to the NASA White Sands Test Facility in Las Cruces, NM and NMED bureaus of Solid Waste, Hazardous Waste, Air Quality, Surface Water, and Ground Water. Further, the regulatory modifications being proposed would only affect the reporting and recordkeeping requirements for the reports listed in Table A.

B. What Problems Would the NASA WSTF XL Project Address?

The NASA XL project proposes to implement an electronic document submission and recordkeeping system that will reduce the cost and time necessary to submit selected regulatory reports and permit information to NMED as required by EPA regulations. Implementation of this project will reduce the cost and time associated with the reporting of regulatory reports and permit information currently required by EPA and NMED.

C. What Solution Is Proposed by the NASA WSTF Project?

The NASA WSTF proposes to implement an electronic regulatory reporting system. NASA proposes that the extensive paper reporting deliverable requirements of multiple Bureaus of NMED can be simplified and streamlined through use of a paperless regulatory reporting system that allows data to be reported electronically. The system will ultimately provide regulatory agencies with real-time desktop access to site-specific environmental compliance information and reduce needed resources including document preparation time, white paper usage, and triplicate reproduction.

D. What Regulatory Changes Will Be Necessary To Implement This Project?

To implement this project, the Agency is proposing today a site-specific rule that would authorize NMED to allow the NASA WSTF to electronically submit the regulatory reports and permit information included in Table A of

today's proposed rule to the NMED bureaus.

This XL project consists of six phases. After completion of the second phase, EPA intends to draft a site-specific rule to enable NASA WSTF to utilize an internet-based electronic reporting system to be described in a subsequent rule.

E. How Have Various Stakeholders Been Involved in This Project?

NASA established an appropriate stakeholder group to assist in developing the Final Project Agreement for this XL pilot project and to evaluate NASA WSTF's plan and progress in implementing the project. NASA solicited input on this project from a wide range of stakeholders including local and national environmental groups, neighborhood associations, and industry trade associations. Stakeholders were notified of this project by direct mail, telephone, and notification in the local press.

NASA WSTF solicited public involvement in this project by holding public meetings while negotiating the Final Project Agreement for this project with EPA and NMED. The NMED supports this project and is a Project Signatory to the Final Project Agreement.

NASA has kept an open dialogue with interested stakeholders since the project's inception and will continue to involve any interested stakeholders in the project's development. In addition, EPA and NASA will make all project-related final documents and events publicly accessible through announcements, EPA's web site, and public dockets.

F. How Would This Project Result in Cost Savings and Paperwork Reduction?

In this XL project, the NASA White Sands Test Facility proposes to reduce its EPA and NMED reporting and recordkeeping costs through use of an electronic document reporting and recordkeeping system. NASA would provide NMED and EPA with access to NASA WSTF's regulatory information by electronically submitting regulatory reports and permit information to a NASA controlled web site and forwarding compliance data on CD-ROM's in lieu of submitting paper reports to each NMED Bureau. NASA's use of electronic reporting would greatly reduce the number of reports submitted on paper. Additionally, use of the proposed electronic reporting system would reduce the manpower required to compile and disseminate compliance information.

G. What Are the Terms of the NASA WSTF XL Project and How Would They Be Enforced?

This project would be in effect for five years from the date the final rule takes effect. Any Project Signatory may terminate its participation in this project at any time in accordance with the procedures set forth in the FPA.

Upon completion of the project term, EPA and NMED, have committed to evaluate the project. If the project results indicate that it was a success, EPA will consider transferring the regulatory flexibility (or some similar flexibility) to the national RCRA, CAA, or CWA program (through rulemaking procedures). Should the project results indicate that the project was not successful or if the project is terminated early, EPA may promulgate a rule to remove the site-specific regulatory flexibility.

H. Does EPA Propose to Require Revision of NMED's Authorized, Delegated, or Approved Programs?

EPA is not proposing to revise the affected State authorized, delegated, or approved programs. Today's rule would affect only certain reports submitted by a single facility. Electronic reporting and record keeping would also be permitted only in accordance with the specific requirements articulated in today's proposal. EPA solicits comments on these specific requirements. Under these circumstances, EPA does not believe that program revision is necessary. Nonetheless, EPA solicits comment on whether EPA should require New Mexico to seek revision of the affected State programs.

IV. Additional Information

A. How Does This Rule Comply With Executive Order 12866?

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (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 in 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 of 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.

Because this rule affects only one facility, it is not a rule of general applicability and therefore not subject to OMB review and Executive Order 12866. In addition, OMB has agreed that review of site specific rules under Project XL is not necessary. Additionally, the annualized cost of this final rule would be significantly less than $100 million and would not meet any of the other criteria specified in the Executive Order, therefore, it has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866, and is therefore not subject to OMB review.

Executive Order 12866 also encourages agencies to provide a meaningful public comment period, and suggests that in most cases the comment period should be 60 days. However, in consideration of the very limited scope of today's proposed rulemaking and the public involvement in the development of the proposed Final Project Agreement, EPA considers 30 days to be sufficient in providing a meaningful public comment period for today's action.

B. Is a Regulatory Flexibility Analysis Required?

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.* generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This rule would not have a significant impact on a substantial number of small entities because it would only affect the NASA White Sands Test Facility, in Las Cruces, NM, and it is not a small entity. Therefore, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

C. Does this Project Trigger the Requirements of the Unfunded Mandates Reform Act?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of

their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of 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.

As noted above, this rule would apply only to one facility in Las Cruces, New Mexico. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

D. How Does This Rule Comply With Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risk?

The 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 an economically significant rule, as defined by Executive Order 12866, and because it does not involve decisions based on environmental health or safety risks. This rule sets forth electronic reporting procedures for the submission of environmental compliance data.

E. How Does This Rule Comply With 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 would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's proposed rule would implement a project developed under an entirely voluntary federal program; thus, Executive Order 13132 does not apply to this 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 solicited comments on the proposed rule from State and local officials.

F. How Does This Rule Comply With Executive Order 13175: Consultation and Coordination With Indian Tribal Government?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule would not have tribal implications. It would 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. Today's proposed rule, would affect a single, non-tribal facility that is not located on tribal lands and this rule would have no impact on tribal law or culture; 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 proposed rule from tribal officials.

G. How Does This Rule Comply With the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standard.

Today's proposed rule would allow NASA WSTF to mail regulatory reports and permit information on a CD–ROM diskette to NMED using specified technical standards. EPA proposes to require that NMED require NASA WSTF to use Portable Data Format (PDF), Hypertext Markup Language (HTML) and eXtensible Mark-Up Language (XML) format standards in these CD–ROM submissions. Accordingly, this rule would comply with the requirements of NTTAA.

H. How Does This Rule Comply With 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.

I. Requirements for Today's Rule

For the reasons set forth above and under the conditions described below, EPA authorizes the New Mexico Environment Department (NMED) to allow the National Aeronautics and Space Administration (NASA) White Sands Test Facility (WTSF) to submit and retain in electronic form any of the documents listed in Table A.

J. How Does This Rule Comply With the Paperwork Reduction Act?

Information collection requests will not pertain to this rule, which pertains to a site specific pilot program that has only one respondent.

1. Definitions. For purposes of this rule, the terms listed below are defined as follows:

Certificate Authority (CA) means an entity which EPA has authorized to serve as the trusted third party to oversee the certificate enrollment, issuance, validation, and revocation processes. The CA also conducts identity proofing inquiries and issues digital certificates that accurately convey the subscriber's identity information and public keys.

Designated Representative means an individual who is authorized to sign reports for the NASA WSTF with respect to the submission of any documents listed in Table A.

Digital Signature means a number uniquely calculated by the application of an encryption algorithm, using a value supplied by an individual's private key, to a message digest for the document being signed.

Electronic record-keeping system means any set of apparatus, procedures, software, records or documentation used to retain exact electronic copies of electronic records and electronic documents.

Electronic signature means any electronic record that is incorporated into (or appended to) an electronic document for the purpose of expressing the same meaning and intention that an individual's handwritten signature would express if affixed in the same relation to the document's content presented on paper.

Private/public key pair means a pair of numbers mathematically related to each other and to a specified encryption algorithm such that: (i) the private key cannot be derived from the public key, and (ii) using the encryption algorithm, the public key will only decrypt messages encrypted with the private key and it is the only key that will decrypt these messages.

2. Authentication. A Designated Representative must use a digital certificate, issued by a third party authorized by EPA, and EPA-approved electronic signature software to affix a digital signature to any electronic version of a document in Table A.

3. Electronic Signature Agreement. NMED shall require each Designated Representative to sign, in handwriting with ink on paper, the Electronic Signature Agreement in Appendix A. By signing the Electronic Signature Agreement, a Designated Representative must, at a minimum, agree to:

(a) protect the private key from unauthorized use by anyone other than the Designated Representative;

(b) be held as legally bound, obligated, or responsible by use of the Designated Representative's private key to create a digital signature as by handwritten signature;

(c) under no circumstances, delegate the use of the private key or make it available for use by anyone else;

(d) report to NMED within twenty-four hours of discovery any evidence of the loss, theft, or other compromise of any component of the digital signature;

(e) immediately notify EPA and NMED in writing if the Designated Representative loses the authority to sign reports submitted to NMED as a representative of NASA WSTF; and

(f) secure any assistance of third parties that is needed to protect a signature from unauthorized use.

4. General Submission Requirements. In lieu of a paper document, NMED may accept from NASA WSTF an electronic version of any document listed in Table A, provided the electronic document bears a valid digital signature, as provided in sections 2 and 3 of this rule, to the same extent that a paper submission for which the document substitutes would bear a handwritten signature. To be valid a digital signature must be created by a Designated Representative and with a private key device issued to that person.

5. CD–ROM Submission Procedures. Electronic versions of documents listed in Table A may only be submitted by certified mail to the appropriate NMED bureau in Portable Data Format (PDF), Hypertext Markup Language (HTML) or eXtensible Markup Language format on a read-only CD–ROM disk. To be acceptable, each submission must include a digital signature, as provided in sections 2, 3, and 4 of this rule, and a certification statement, as provided in section 7 of this rule.

6. Frequency. Any electronic documents submitted must be submitted at the same time and with the same frequency prescribed under applicable NMED and EPA regulations for their paper equivalents.

7. Compliance Certification. NMED must require that, as part of any electronic document that it receives from NASA WSTF, a Designated Representative provides a digitally-signed electronic compliance certification that includes at least the following:

(a) the name of the regulatory document being submitted;

(b) date of signature;

(c) name and mailing address of the NMED bureau to which the document is being sent; and

(d) a digital signature of the Designated Representative who attests to a statement that reads as follows:

''I am authorized to submit the electronic document identified above on behalf of the NASA White Sands Test Facility. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this electronic document and all of its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information contained in this electronic document and its attachments are, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.

I recognize that NMED and EPA will rely on this electronic document in lieu of an equivalent paper document, and that this document and the information it contains will be used to determine my compliance with federal and State law.

In addition, I certify that I am the individual to whom the digital

certificate used in signing this document has been issued and that I have at all times complied with the terms under which this certificate was issued, including my obligation to protect my private key from use by anyone other than myself and to report any compromise of any component of my digital signature.''

8. Electronic Record-keeping. Any electronic version of a document listed in Table A must be retained in electronic format by both NASA WSTF and NMED for as long as a corresponding paper document must be stored under applicable State or federal law. NMED must require that:

(a) NASA make electronic copies of electronic documents available on an individual, collective, or standing basis to NMED upon written request. These electronic documents must be promptly transmitted, mailed, or available for inspection as NMED requests.

(b) NASA employ a method of electronic record retention that:

(1) Generates and maintains accurate and complete electronic documents in a form that may not be altered without detection;

(2) produces accurate and complete copies of any electronic document and renders these copies readily available, in both human readable and electronic form, for on-site inspection and off site review, for the entirety of the required period of record retention;

(3) ensures that any electronic record or electronic document bearing an electronic signature contain the name of the signatory and the date and time of signature;

(4) prevents an electronic signatory and the date and time of signature;

(5) ensures that record changes do not obscure previously recorded information and that audit trail documentation is retained for at least as long as the electronic document;

(6) ensures that electronic documents are searchable and retrievable for reference and secondary uses, including inspections, audits, and legal proceedings; and

(7) archives records in an electronic form which preserves the context, meta data, and audit trail.

Dated: October 24, 2001.

Christine Todd Whitman,

Administrator.

TABLE A.—COVERED DOCUMENTS

State permit	Report name
Post Closure Care Permit NM88000194–2	Application for renewal submittal.
Post Closure Care Permit NM88000194–2	Duty to provide requested information.
Post Closure Care Permit NM88000194–2	Revision/Modification Notification Report.
Post Closure Care Permit NM88000194–2	Non compliance report.
Post Closure Care Permit NM88000194–2	Notification of Emergency Coordinators list change.
Post Closure Care Permit NM88000194–2	Annual compliance monitoring report.
Post Closure Care Permit NM88000194–2	Annual potentiometric flow net report.
Post Closure Care Permit NM88000194–2	Incident reports.
Post Closure Care Permit NM88000194–2	Request for modified post closure care period.
Post Closure Care Permit NM88000194–2	Completion of post closure care requirements submittal.
Post Closure Care Permit NM88000194–2	Appendix IX analysis new defects notification.
Post Closure Care Permit NM88000194–2	Annual effectiveness/conclusions report.
Post Closure Care Permit NM88000194–2	Well Replacement notification.
Post Closure Care Permit NM88000194–2	Modification of groundwater monitoring plan submittal.
Landfill Post Closure Care Plan	Plan revision submittal.
Landfill Post Closure Care Plan	Methane and groundwater.
Landfill Post Closure Care Plan	Inspections and maintenance reports.
Discharge Plan DP–392	Annual Wastewater flow volumes submittal.
Discharge Plan DP–392	Spill contingency notification.
Discharge Plan DP–392	Contingency Plan notification.
Discharge Plan DP–392	Duty to provide requested information.
Discharge Plan DP–392	Modification notifications.
Discharge Plan DP–392	Right to appeal petition.
Discharge Plan DP–392	Transfer of ownership notification.
Discharge Plan DP–392	Application for renewal submittal.
Discharge Plan DP–392	Internal written recordkeeping.
Discharge Plan DP–584	Semi-annual Monitoring Reports Submittal.
Discharge Plan DP–584	Semi-annual wastewater discharge volumes report submittal.
Discharge Plan DP–584	Closure sampling results submittal.
Discharge Plan DP–584	Internal written recordkeeping.
Discharge Plan DP–584	Duty to provide requested information.
Discharge Plan DP–584	Spill contingency notification.
Discharge Plan DP–584	Modification notifications.
Discharge Plan DP–584	Right to appeal petition.
Discharge Plan DP–584	Transfer of ownership notification.
Discharge Plan DP–584	Application for renewal submittal.
Discharge Plan DP–697	Leak contingency notification and reporting.
Discharge Plan DP–697	Mitigation summary report submittal.
Discharge Plan DP–697	Quarterly monitoring reports submittal.
Discharge Plan DP–697	Internal written recordlkeeping.
Discharge Plan DP–697	Duty to provide requested information.
Discharge Plan DP–697	Modification notifications.
Discharge Plan DP–697	Right to appeal petition.
Discharge Plan DP–697	Transfer of ownership notification.
Discharge Plan DP–697	Application for renewal submittal.
Discharge Plan DP–1170	Leak contingency notification and reporting.
Discharge Plan DP–1170	Semi annual monitoring reports submittal.
Discharge Plan DP–1170	Internal written recordkeeping.

TABLE A.—COVERED DOCUMENTS—Continued

State permit	Report name
Discharge Plan DP–1170	Duty to provide requested information.
Discharge Plan DP–1170	Modification notifications.
Discharge Plan DP–1170	Right to appeal petition.
Discharge Plan DP–1170	Transfer of ownership notification.
Discharge Plan DP–1170	Application for renewal submittal.
Landfill Post Closure Care Plan	Inspections and maintenance reports.
Landfill Post Closure Care Plan	Methane and groundwater monitoring data reports. .
Landfill Post Closure Care Plan	Plan revision submittal.
Landfill Post Closure Care Plan	Change of responsible parties notification.
Landfill Post Closure Care Plan	30 year reporting requirement.
Landfill Groundwater Monitoring Plan	Plan revision submittal.
Landfill Groundwater Monitoring Plan	Request to modify sampling frequencies submittal.
Landfill Groundwater Monitoring Plan	Monitoring level exceedance notification.
Landfill Groundwater Monitoring Plan	Analytical data reports.
RCRA Operating Permit NM8800019434–1	Revision/Modification notification.
RCRA Operating Permit NM8800019434–1	Waste Analysis Plan modification submittal.
RCRA Operating Permit NM8800019434–1	Submittal signatory requirements.
RCRA Operating Permit NM8800019434–1	Requests for deadline extension.
RCRA Operating Permit NM8800019434–1	Newly identified SWMUs notification.
RCRA Operating Permit NM8800019434–1	Newly identified SWMUs notification plan.
RCRA Operating Permit NM8800019434–1	Newly discovered release notification.
RCRA Operating Permit NM8800019434–1	Newly discovered release investigation plan.
RCRA Operating Permit NM8800019434–1	Transfer of ownership notification.
RCRA Operating Permit NM8800019434–1	RFI/CMS and monthly progress reports.
RCRA Operating Permit NM8800019434–1	Revised reports submittals.
RCRA Operating Permit NM8800019434–1	Non EPA analytical method protocol submittal.
RCRA Operating Permit NM8800019434–1	Off site access agreements submittal.
RCRA Operating Permit NM8800019434–1	Monthly analytical data reports.
RCRA Operating Permit NM8800019434–1	Project coordinator change notification.
RCRA Operating Permit NM8800019434–1	Reports, plans, notifications, etc ''in writing'' requirement.
RCRA Operating Permit NM8800019434–1	Lack of funds notification.
RCRA Operating Permit NM8800019434–1	Written statement of dispute submittal.
RCRA Operating Permit NM8800019434–1	''Force majeur'' event notification.
RCRA Operating Permit NM8800019434–1	Final RFI/CMS submittal.
RCRA Operating Permit NM8800019434–1	Application for renewal submittal.
RCRA Operating Permit NM8800019434–1	Duty to provide requested information. .
RCRA Operating Permit NM8800019434–1	Annual ETU liner assessment report.
RCRA Operating Permit NM8800019434–1	Notification of non compliance.
RCRA Operating Permit NM8800019434–1	Notification and certification of closure and survey plat.
RCRA Operating Permit NM8800019434–1	Emergency coordinator personnel change notification.
RCRA Operating Permit NM8800019434–1	Contingency plan modification submittal.
RCRA Operating Permit NM8800019434–1	Spill incident reports.
RCRA Operating Permit NM8800019434–1	Spill response and corrective action reports.
RCRA Operating Permit NM8800019434–1	Certifications of major repairs submittal and recordkeeping.
RCRA Operating Permit NM8800019434–1	ETU secondary containment useful life extension request.
RCRA Operating Permit NM8800019434–1	ETU steel structure useful life extension request.
RCRA Operating Permit NM8800019434–1	ODU waste quantity exceedance notification.
RCRA Operating Permit NM8800019434–1	ODU statistical results and constituent exceedance report.
RCRA Operating Permit NM8800019434–1	FTU waste quantity exceedance notification.
Air Quality Permit # 629–M–1	40 CFR Notification Requirements.
Air Quality Permit # 629–M–1	Revision/Modification Notice.
Air Quality Permit # 629–M–1	Compliance Testing schedule notification.
Air Quality Permit # 629–M–1	Written test protocol submittal.
Air Quality Permit # 629–M–1	Compliance test report submittal.
Air Quality Permit # 629–M–1	Quarterly reports submittal.
Air Quality Permit # 629–M–1	Duty to provide requested information.
Air Quality Permit # 629–M–1	Transfer of ownership notification.
Air Quality Permit # 629–M–1	Modification notifications.
Air Quality Permit # 629–M–1	Change of operator notification.
Air Quality Permit # 629–M–1	Right to appeal notification.
Air Quality Permit # 629–M–1	Certifications of major repairs submittals and recordkeeping.
Air Quality Permit # 629–M–1	ETU secondary containment useful life extension request.
Air Quality Permit # 629–M–1	ETU steel structure useful life extension request.
Air Quality Permit # 629–M–1	ODU waste quantity exceedance notification.
Air Quality Permit # 629–M–1	ODU statistical results and constituent exceedance report.
Air Quality Permit # 629–M–1	FTU waste quantity exceedance notification.
Air Quality Permit # 629 M–3	40 CFR part 60 notification requirements.
Air Quality Permit # 629 M–3	Revision/Modification notification.
Air Quality Permit # 629 M–3	Compliance Testing schedule notification.
Air Quality Permit # 629 M–3	Written test protocol submittal.
Air Quality Permit # 629 M–3	Compliance test report submittal.
Air Quality Permit # 629 M–3	Transfer of ownership notification.

TABLE A.—COVERED DOCUMENTS—Continued

State permit	Report name
Air Quality Permit # 629 M–3	Duty to provide requested information.
Air Quality Permit # 629 M–3	Change of operator notification.
Air Quality Permit # 629 M–3	Quarterly reports submittal.
Air Quality Permit # 629 M–3	Right to appeal petition.
Air Quality Permit #400 M–1	Revision/Modification notification.
Air Quality Permit #400 M–1	40 CFR part 60 notification requirements.
Air Quality Permit #400 M–1	Change of operator notification.
Air Quality Permit #400 M–1	Compliance testing schedule notification.
Air Quality Permit #400 M–1	Written test protocol submittal.
Air Quality Permit #400 M–1	Transfer of ownership notification.
Air Quality Permit #400 M–1	Duty to provide requested information.
Air Quality Permit #400 M–1	Right to appeal petition.
Air Quality Permit #400 M–1	Transfer of ownership notification.
Air Quality Permit #400 M–1	Duty to provide requested information.
Air Quality Permit #400 M–1	Right to appeal petition.
Surface Water	Best Management Practices Report.
Surface Water	Surface Water Management: Surface Water Worksheet

Appendix A

Project XL Electronic Signature Agreement

In accepting the digital certificate issued by the EPA approved Certificate Authority to digitally sign electronic documents submitted to the New Mexico Environmental Department (NMED) as part of the NASA White Sands Test Facility (NASA WSTF) Project XL pilot project, I, [name of digital signature holder],

(1) agree to protect the private key from use by anyone except me,

(2) understand and agree that I will be held as legally bound, obligated, or responsible by my use of my private key as I would be using my hand-written signature, and that legal action can be taken against me based on my use of my private key in submitting reports to NMED.

(3) agree never to delegate the use of my private key or make it available for use by anyone else;

(4) agree to report to NMED and the issuer of the certificate within twenty-four (24) hours of discovery, any evidence of the loss, theft, or other compromise of my private key;

(5) agree to report to NMED and the issuer of the certificate within twenty-four (24) hours of discovery, any evidence of discrepancy between a report I have signed and submitted and what NMED has received from me;

(6) agree to notify NMED and issuer of the certificate in writing if I cease to represent NASA WSTF as signatory of that organization's reports to NMED as soon as this change in relationship occurs.

NASA WSTF Designated Representative.

NMED Chief Information Officer.

[FR Doc. 01–27380 Filed 10–30–01; 8:45 am]

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Federal Register

Wednesday,
October 31, 2001

Part IV

Department of Justice

Bureau of Prisons

28 CFR Parts 500 and 501

National Security; Prevention of Acts of Violence and Terrorism; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 500 and 501

[BOP–1116; AG Order No. 2529–2001]

RIN 1120–AB08

National Security; Prevention of Acts of Violence and Terrorism

AGENCY: Bureau of Prisons, Department of Justice.

ACTION: Interim rule with request for comment.

SUMMARY: The current regulations of the Bureau of Prisons on institutional management authorize the Bureau to impose special administrative measures with respect to specified inmates, based on information provided by senior intelligence or law enforcement officials, where it has been determined to be necessary to prevent the dissemination either of classified information that could endanger the national security or of other information that could lead to acts of violence and terrorism. This rule extends the period of time for which such special administrative measures may be imposed from 120 days to up to one year, and modifies the standards for approving extensions of such special administrative measures. In addition, in those cases where the Attorney General has certified that reasonable suspicion exists to believe that an inmate may use communications with attorneys or their agents to further or facilitate acts of violence or terrorism, this rule amends the existing regulations to provide that the Bureau is authorized to monitor mail or communications with attorneys in order to deter such acts, subject to specific procedural safeguards, to the extent permitted under the Constitution and laws of the United States. Finally, this rule provides that the head of each component of the Department of Justice that has custody of persons for whom special administrative measures are determined to be necessary may exercise the same authority to impose such measures as the Director of the Bureau of Prisons.

DATES: *Effective date*: October 30, 2001.

Comment date: Written comments must be submitted on or before December 31, 2001.

ADDRESSES: Rules Unit, Office of the General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of the General Counsel, Bureau of Prisons, (202) 307–2105.

SUPPLEMENTARY INFORMATION: On June 20, 1997 (62 FR 33732), the Bureau of Prisons (''Bureau'') finalized its interim regulations on the correctional management of inmates whose contacts with other persons present the potential for disclosure of classified information that could endanger national security or of other information that could lead to acts of violence or terrorism. These rules are codified at 28 CFR 501.2 (national security) and 501.3 (violence and terrorism).

The Bureau previously had published an interim rule on preventing the disclosure of classified information in the **Federal Register** on October 13, 1995 (60 FR 53490). No public comment was received, and the 1997 final rule adopted the 1995 interim rule with only minor changes. In general, § 501.2 authorizes the Director of the Bureau of Prisons to impose special administrative measures with respect to a particular inmate that are reasonably necessary to prevent disclosure of classified information, upon a written certification by the head of a United States intelligence agency that the unauthorized disclosure of such information would pose a threat to the national security and that there is a danger that the inmate will disclose such information. These special administrative measures ordinarily may include housing the inmate in administrative detention and/or limiting certain privileges, including, but not limited to, correspondence, visiting, interviews with representatives of the news media, and use of the telephone, as is reasonably necessary to prevent the disclosure of classified information.

The Bureau also had previously published a separate interim rule on preventing acts of violence and terrorism on May 17, 1996 (61 FR 25120). The Bureau's 1997 final rule responded at length to the public comments received on the 1996 interim rule. Section 501.3 authorizes the imposition of similar special administrative measures on a particular inmate based on a written determination by the Attorney General or, at the Attorney General's discretion, the head of a federal law enforcement or intelligence agency that there is a substantial risk that an inmate's communications or contacts with other persons could result in death or serious bodily injury to persons, or substantial damage to property that would entail the risk of death or serious bodily injury to persons.

In either case, the affected inmate may seek review of any special administrative measures imposed pursuant to §§ 501.2 or 501.3 in accordance with paragraph (a) of this section through the Administrative Remedy Program, 28 CFR part 542.

Both rules limit the initial period of special administrative measures to 120 days, and provide that additional 120-day periods may be authorized based on a certification or notification that the circumstances identified in the original notification continue to exist.

Changes to § 501.2 With Respect to National Security

This rule makes no change in the substantive standards for the imposition of special administrative measures, but changes the initial period of time under § 501.2 from a fixed 120-day period to a period of time designated by the Director, up to one year. Where the head of an intelligence agency has certified to the Attorney General that there is a danger that the inmate will disclose classified information posing a threat to the national security, there is no logical reason to suppose that the threat to the national security will dissipate after 120 days. This rule allows the Director to designate a longer period of time, up to one year, in order to protect the national security.

The rule also allows for the Director to extend the period for the special administrative measures for additional one-year periods, based on subsequent certifications from the head of an intelligence agency. This will ensure a continuing review by the Director and the intelligence community of the need for the special administrative measures in light of the ongoing risks to the national security. Given the serious nature of the danger to the national security, as determined by the head of the intelligence agency, this approach reflects an appropriate balancing of the interests of the individual inmates and of the public interest in protecting against the disclosure of such national security information.

In addition, this rule modifies the standard for approving extensions of the special administrative measures. The existing regulation requires that the head of the intelligence agency certify that ''the circumstances identified in the original certification continue to exist.'' This standard, however, is unnecessarily static, as it might be read to suggest that the subsequent certifications are limited to a reevaluation of the original grounds. Instead, this rule provides that the subsequent certifications by the head of an intelligence agency may be based on

any information available to the intelligence agency.

Changes to § 501.3 With Respect to Prevention of Acts of Violence and Terrorism

This rule makes no change in the substantive standards for the implementation of special administrative measures under § 501.3(a). The rule also retains the existing authority of the Director to extend the imposition of the special administrative measures for additional periods, based on subsequent certifications from the Attorney General or the head of a federal law enforcement or intelligence agency. By continuing to apply the existing standards under § 501.3(a), this rule preserves the balance struck in the 1997 final rule and ensures that the inmate's circumstances will be subject to a continuing review.

However, this rule also recognizes that the threats of violence or terrorism posed by an inmate's communications or contacts with his or her associates, whether those other persons are within the detention facility or in the community at large, may in many cases be manifested on a continuing basis, such that the periods for special administrative measures need not be limited to 120 days. Accordingly, this rule allows the Director, with the approval of the Attorney General, to impose special administrative measures for a longer period of time, not to exceed one year, in cases involving acts of violence or terrorism. In addition, the rule provides authority for the Director under certain circumstances to provide for extensions of the period for the special administrative measures for additional periods, up to one year.

This rule also modifies the standard for approving extensions of the special administrative measures. The existing regulation requires that the Attorney General or the head of the federal law enforcement or intelligence agency determine that ''the circumstances identified in the original notification continue to exist.'' Again, that standard is unnecessarily static, as it might be read to suggest that the subsequent determinations are limited to a reevaluation of the original grounds.

Recent incidents of terrorism and violence demonstrate, without question, that some criminal conspiracies develop and are carried out over a long period—far in excess of 120 days. During that time, as the plans may change or develop, there may be changes in the level of activity directed toward that conspiracy over time by the various participants. The level of participation by a particular inmate in the planning or orchestration of a terrorist or violent criminal conspiracy may vary over time.

The existing regulation fails to recognize that an inmate still may be an integral part of an ongoing conspiracy even though his or her activity may change over time—or, indeed, possibly even be dormant for limited periods of time. Those changes in an inmate's role over time, however, would not alter the significance of the inmate's role in planning acts of terrorism or violence and do not diminish the urgent need for law enforcement authorities to curb the inmate's ability to participate in planning or facilitating those acts through communications with others within or outside the detention facility. The phraseology of the existing rule also may raise questions about the relevance of more recently acquired information. For these reasons, it would not be appropriate to require a factual determination, in effect, that ''nothing has changed'' with respect to the initial determination.

Accordingly, this rule provides that the subsequent notifications by the Attorney General, or the head of the federal law enforcement or intelligence agency should focus on the key factual determination—that is, whether the special administrative measures continue to be reasonably necessary, at the time of each determination, because there is a substantial risk that an inmate's communications or contacts with persons could result in death or serious bodily injury to persons, or substantial damage to property that would entail the risk of death or serious bodily injury to persons. Where the Attorney General, or the head of a federal law enforcement or intelligence agency, previously has made such a determination, then the determination made at each subsequent review should not require a de novo review, but only a determination that there is a continuing need for the imposition of special administrative measures in light of the circumstances.

With these changes, § 501.3 will still ensure a continuing, periodic review by the Director and the law enforcement and intelligence communities of the need for the special administrative measures in light of the ongoing risks of terrorism or violent crime. Given the serious nature of the danger to the public arising from such incidents, coupled with a determination by the Attorney General or the head of a federal law enforcement or intelligence agency regarding the danger posed by each particular inmate, this approach reflects an appropriate balancing of the interests of the individual inmates and of the public interest in detecting and deterring acts of terrorism and violence.

Although this rule does not alter the substantive standards for the initial imposition of special administrative measures under § 501.3, it is worth noting that the Bureau's final rule implementing this section in 1997 devoted a substantial portion of the supplementary information accompanying the rule to a discussion of the relevant legal issues. 62 FR 33730–31. As the U.S. Supreme Court noted in *Pell* v. *Procunier,* 417 U.S. 817, 822, 823 (1974), ''a prison inmate retains those First Amendment rights that are not inconsistent with his status as an inmate or with the legitimate penological objectives of the corrections system. * * * An important function of the corrections system is the deterrence of crime. * * * Finally, central to all other corrections goals is the institutional consideration of internal security within the corrections facilities themselves.''

This regulation, with its concern for security and protection of the public, clearly meets this test. The changes made by this rule, regarding the length of time and the standards for extension of periods of special administrative measures, do not alter the fundamental basis of the rules that were adopted in 1997. Instead, they more clearly focus the provisions for extensions—both the duration of time and the standards—on the continuing need for restrictions on a particular inmate's ability to communicate with others within or outside the detention facility in order to avoid the risks of terrorism and violence. In every case, the decisions made with respect to a particular inmate will reflect a consideration of the issues at the highest levels of the law enforcement and intelligence communities. Where the issue is prevention of acts of violence and terrorism, it is appropriate for government officials, at the highest level and acting on the basis of their available law enforcement and intelligence information, to impose restrictions on an inmate's public contacts that may cause or facilitate such acts.

Monitoring of Communications With Attorneys To Deter Acts of Terrorism

In general, the Bureau's existing regulations relating to special mail (§§ 540.18, 540.19), visits (§ 540.48), and telephone calls (§ 540.103) contemplate that communications between an inmate and his or her attorney are not subject to the usual rules for monitoring of inmate communications. In specific instances, however, based on information from federal law

enforcement or intelligence agencies, the Bureau may have substantial reason to believe that certain inmates who have been involved in terrorist activities will pass messages through their attorneys (or the attorney's legal assistant or an interpreter) to individuals on the outside for the purpose of continuing terrorist activities.

The existing regulations, of course, recognize the existence of the attorney-client privilege and an inmate's right to counsel. However, it also is clear that not all communications between an inmate and an attorney would fall within the scope of that privilege. For example, materials provided to an attorney that do not relate to the seeking or providing of legal advice are not within the attorney-client privilege. Accordingly, such materials would not qualify as special mail under the Bureau's regulations.

The attorney-client privilege protects confidential communications regarding legal matters, but the law is clear that there is no protection for communications that are in furtherance of the client's ongoing or contemplated illegal acts. *Clark* v. *United States*, 289 U.S. 1, 15 (1933) (such a client ''will have no help from the law''); *United States* v. *Gordon-Nikkar*, 518 F. 2d 972, 975 (5th Cir. 1975) (''it is beyond dispute that the attorney-client privilege does not extend to communications regarding an intended crime''). The crime/fraud exception to the attorney-client privilege applies even if the attorney is unaware that his professional service is being sought in furtherance of an improper purpose, *United States* v. *Soudan*, 812 F.2d 920, 927 (5th Cir. 1986), and the attorney takes no action to assist the client, *In re Grand Jury Proceedings,* 87 F. 3d 377, 382 (9th Cir. 1996).

This rule provides specific authority for the monitoring of communications between an inmate and his or her attorneys or their agents, where there has been a specific determination that such actions are reasonably necessary in order to deter future acts of violence or terrorism, and upon a specific notification to the inmate and the attorneys involved. The rule provides for (1) protection of the inmate's right to counsel; (2) the use of a special ''privilege team'' to contemporaneously monitor an inmate's communications with counsel, pursuant to established firewall procedures, when there is a sufficient justification of need to deter future acts of violence or terrorism; (3) a procedure for federal court approval prior to the release or dissemination of information gleaned by the privilege team while monitoring the inmate's communications with counsel; and (4) an emergency procedure for immediate dissemination of information pertaining to future acts of violence or terrorism where those acts are determined to be imminent.

The Supreme Court has held that the presence of a government informant during conversations between a defendant and his or her attorney may, but need not, impair the defendant's Sixth Amendment right to effective assistance of counsel. *See Weatherford* v. *Bursey*, 429 U.S. 545, 552–54 (1977). When the government possesses a legitimate law enforcement interest in monitoring such conversations, *cf. Massiah* v. *United States*, 377 U.S. 201, 207 (1964), no Sixth Amendment violation occurs so long as privileged communications are protected from disclosure and no information recovered through monitoring is used by the government in a way that deprives the defendant of a fair trial. The procedures established in this new rule are designed to ensure that defendants' Sixth Amendment rights are scrupulously protected. The circumstances in which monitoring will be permitted are defined narrowly and in a way that reflects a very important law enforcement interest: the prevention of acts of violence or terrorism. The monitoring is not surreptitious; on the contrary, the defendant and his or her attorney are required to be given notice of the government's listening activities. The rule requires that privileged information not be retained by the government monitors and that, apart from disclosures necessary to thwart an imminent act of violence or terrorism, any disclosures to investigators or prosecutors must be approved by a federal judge.

In following these procedures, it is intended that the use of a taint team and the building of a firewall will ensure that the communications which fit under the protection of the attorney-client privilege will never be revealed to prosecutors and investigators. Procedures such as this have been approved in matters such as searches of law offices, *See, e.g., National City Trading Corp.* v. *United States*, 635 F.2d 1020, 1026–27 (2d Cir. 1980). In a similar vein, screening procedures are used in wiretap surveillance. *See, e.g., United States* v. *Noriega*, 764 F. Supp. 1480 (S.D. Fla. 1991) (DEA agent unrelated to the case reviewed prison telephone tapes to determine whether they contained any privileged attorney-client communications; agent mistakenly reduced one such communication to memorandum form, but the assigned prosecutor stopped reading the memo once he realized it contained attorney-client conversation; the court cited the screening procedure as a factor in finding that the government's intrusion into the defense camp was unintentional, and that the intrusion had not benefitted the government). Likewise, firewalls have been built so that an entire prosecution office is not disqualified when a lawyer who formerly represented or had a connection to a defendant joins the prosecutor's office but has no involvement in his former client's prosecution. *See Blair* v. *Armontrout*, 916 F.2d 1310, 1333 (8th Cir. 1990).

This rule carefully and conscientiously balances an inmate's right to effective assistance of counsel against the government's responsibility to thwart future acts of violence or terrorism perpetrated with the participation or direction of federal inmates. In those cases where the government has substantial reason to believe that an inmate may use communications with attorneys or their agents to further or facilitate acts of violence or terrorism, the government has a responsibility to take reasonable and lawful precautions to safeguard the public from those acts.

Applicability to All Persons in Custody Under the Authority of the Attorney General

The existing §§ 501.2 and 501.3 cover only inmates in the custody of the Bureau of Prisons. However, there are instances when a person is held in the custody of other officials under the authority of the Attorney General (for example, the Director of the United States Marshals Service or the Commissioner of the Immigration and Naturalization Service). To ensure consistent application of these provisions relating to special administrative measures in those circumstances where such restrictions are necessary, this rule clarifies that the appropriate officials of the Department of Justice having custody of persons for whom special administrative measures are required may exercise the same authorities as the Director of the Bureau of Prisons and the Warden.

We are also clarifying the definition of ''inmate'' to avoid any question whether these regulations apply to all persons in BOP custody.

Administrative Procedure Act, 5 U.S.C. 553

The Department's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based on the foreign affairs exception, 5 U.S.C. 553(a), and upon

findings of good cause pursuant to 5 U.S.C. 553(b)(B) and (d).

The immediate implementation of this interim rule without public comment is necessary to ensure that the Department is able to respond to current intelligence and law enforcement concerns relating to threats to the national security or risks of terrorism or violent crimes that may arise through the ability of particular inmates to communicate with other persons. Recent terrorist activities perpetrated on United States soil demonstrate the need for continuing vigilance in addressing the terrorism and security-related concerns identified by the law enforcement and intelligence communities. It is imperative that the Department have the immediate ability to impose special administrative measures, and to continue those measures over time, with respect to persons in its custody who may wrongfully disclose classified information that could pose a threat to national security or who may be planning or facilitating terrorist acts.

In view of the immediacy of the dangers to the public, the need for detecting and deterring communications from inmates that may facilitate acts of violence or terrorism, and the small portion of the inmate population likely to be affected, the Department has determined that there is good cause to publish this interim rule and to make it effective upon publication, because the delays inherent in the regular notice-and-comment process would be ''impracticable, unnecessary and contrary to the public interest.'' 5 U.S.C. 553(b)(B), (d). Application of these measures is likely to affect only a small portion of the inmate population: those inmates who have been certified by the head of a United States intelligence agency as posing a threat to the national security through the possible disclosure of classified information; or for whom the Attorney General or the head of a federal law enforcement or intelligence agency has determined that there is a substantial risk that the inmate's communications with others could lead to violence or terrorism.

Regulatory Certifications

The Department has determined that this rule is a significant regulatory action for the purpose of Executive Order 12866, and accordingly this rule has been reviewed by the Office of Management and Budget.

The Department certifies, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Act. Because this rule pertains to the management of offenders committed to the custody of the Department of Justice, its economic impact is limited to the use of appropriated funds.

This rule will not have substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 28 CFR Parts 500 and 501

Prisoners.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a), part 501 in subchapter A of 28 CFR, chapter V is amended as set forth below:

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 500—GENERAL DEFINITIONS

1. The authority citation for 28 CFR part 500 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 500.1, paragraph (c) is revised to read as follows:

§ 500.1 Definitions.

* * * * *

(c) *Inmate* means all persons in the custody of the Federal Bureau of Prisons or Bureau contract facilities, including persons charged with or convicted of offenses against the United States; D.C. Code felony offenders; and persons held as witnesses, detainees, or otherwise.

* * * * *

PART 501—SCOPE OF RULES

3. The authority citation for 28 CFR part 501 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

4. In § 501.2, paragraph (c) is revised and paragraph (e) is added, to read as follows:

§ 501.2 National security cases.

* * * * *

(c) Initial placement of an inmate in administrative detention and/or any limitation of the inmate's privileges in accordance with paragraph (a) of this section may be imposed for a period of time as determined by the Director, Bureau of Prisons, up to one year. Special restrictions imposed in accordance with paragraph (a) of this section may be extended thereafter by the Director, Bureau of Prisons, in increments not to exceed one year, but only if the Attorney General receives from the head of a member agency of the United States intelligence community an additional written certification that, based on the information available to the agency, there is a danger that the inmate will disclose classified information and that the unauthorized disclosure of such information would pose a threat to the national security. The authority of the Director under this paragraph may not be delegated below the level of Acting Director.

* * * * *

(e) Other appropriate officials of the Department of Justice having custody of persons for whom special administrative measures are required may exercise the same authorities under this section as the Director of the Bureau of Prisons and the Warden.

4. In § 501.3,

a. Paragraph (c) is revised;

b. Paragraph (d) is redesignated as paragraph (e); and

c. New paragraphs (d) and (f) are added to read as follows:

§ 501.3 Prevention of acts of violence and terrorism.

* * * * *

(c) Initial placement of an inmate in administrative detention and/or any limitation of the inmate's privileges in accordance with paragraph (a) of this section may be imposed for up to 120 days or, with the approval of the Attorney General, a longer period of time not to exceed one year. Special restrictions imposed in accordance with paragraph (a) of this section may be extended thereafter by the Director, Bureau of Prisons, in increments not to exceed one year, upon receipt by the Director of an additional written notification from the Attorney General, or, at the Attorney General's direction, from the head of a federal law enforcement agency or the head of a member agency of the United States intelligence community, that there

continues to be a substantial risk that the inmate's communications or contacts with other persons could result in death or serious bodily injury to persons, or substantial damage to property that would entail the risk of death or serious bodily injury to persons. The authority of the Director under this paragraph may not be delegated below the level of Acting Director.

(d) In any case where the Attorney General specifically so orders, based on information from the head of a federal law enforcement or intelligence agency that reasonable suspicion exists to believe that a particular inmate may use communications with attorneys or their agents to further or facilitate acts of terrorism, the Director, Bureau of Prisons, shall, in addition to the special administrative measures imposed under paragraph (a) of this section, provide appropriate procedures for the monitoring or review of communications between that inmate and attorneys or attorneys' agents who are traditionally covered by the attorney-client privilege, for the purpose of deterring future acts that could result in death or serious bodily injury to persons, or substantial damage to property that would entail the risk of death or serious bodily injury to persons.

(1) The certification by the Attorney General under this paragraph (d) shall be in addition to any findings or determinations relating to the need for the imposition of other special administrative measures as provided in paragraph (a) of this section, but may be incorporated into the same document.

(2) Except in the case of prior court authorization, the Director, Bureau of Prisons, shall provide written notice to the inmate and to the attorneys involved, prior to the initiation of any monitoring or review under this paragraph (d). The notice shall explain:

(i) That, notwithstanding the provisions of part 540 of this chapter or other rules, all communications between the inmate and attorneys may be monitored, to the extent determined to be reasonably necessary for the purpose of deterring future acts of violence or terrorism;

(ii) That communications between the inmate and attorneys or their agents are not protected by the attorney-client privilege if they would facilitate criminal acts or a conspiracy to commit criminal acts, or if those communications are not related to the seeking or providing of legal advice.

(3) The Director, Bureau of Prisons, with the approval of the Assistant Attorney General for the Criminal Division, shall employ appropriate procedures to ensure that all attorney-client communications are reviewed for privilege claims and that any properly privileged materials (including, but not limited to, recordings of privileged communications) are not retained during the course of the monitoring. To protect the attorney-client privilege and to ensure that the investigation is not compromised by exposure to privileged material relating to the investigation or to defense strategy, a privilege team shall be designated, consisting of individuals not involved in the underlying investigation. The monitoring shall be conducted pursuant to procedures designed to minimize the intrusion into privileged material or conversations. Except in cases where the person in charge of the privilege team determines that acts of violence or terrorism are imminent, the privilege team shall not disclose any information unless and until such disclosure has been approved by a federal judge.

* * * * *

(f) Other appropriate officials of the Department of Justice having custody of persons for whom special administrative measures are required may exercise the same authorities under this section as the Director of the Bureau of Prisons and the Warden.

Dated: October 26, 2001.

John Ashcroft,

Attorney General.

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S. 1465/P.L. 107–57
To authorize the President to exercise waivers of foreign assistance restrictions with respect to Pakistan through September 30, 2003, and for other purposes. (Oct. 27, 2001; 115 Stat. 403)

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